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The Treatment of Servants and Slaves in Colonial Virginia

Betty Wade Wyatt Coyle
College of William & Mary - Arts & Sciences

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THE TREATMENT OF SERVANTS AND SLAVES
IN COLONIAL VIRGINIA

A Thesis

Presented to
The Faculty of the Department of Sociology
The College of William and Mary in Virginia

In Partial Fulfillment
Of the Requirements for the Degree of
Master of Arts

by
Betty Wade Wyatt Coyle
1974
APPROVAL SHEET

This thesis is submitted in partial fulfillment of the requirements for the degree of Master of Arts

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Note on the Dating

The Old Style Julian Calendar, which prevailed in the English-speaking world until 1752, was used in compiling the statistics for this paper. Thus, the dated year begins on March 25th rather than January 1st.
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ABSTRACT

There has been some debate over the exact nature of treatment accorded servants and slaves in colonial Virginia. There is no doubt that both blacks and white indentured servants, as members of laboring classes were the victims of some discriminatory treatment. Whether the nature of the discrimination practiced upon each group was similar, however, remains a controverted issue. Many historians feel that since neither the institution of servitude nor slavery existed in formal legislation during the early days of settlement, both black and white laborers were treated in a similar fashion. Others argue that during the seventeenth century slaves, a permanent investment, received treatment superior to that of the servants who labored only for a specified number of years. Still others suggest that blacks were, from the beginning, subjects of a more harsh form of discrimination than servants. Most recent historical research, it is suggested, tends to support this latter theory, as does this thesis.

To clarify this controversy somewhat the laws of colonial Virginia from 1619 to 1730, pertinent to servitude and slavery, were examined. Supplementing this material, the court records of a typical tidewater Virginia county, Lancaster, were read for a period of years, 1660 to 1730, and all of the cases involving servants and slaves were extracted. This material was then analyzed and comparisons between the treatment of servants and slaves drawn. This study applies sociological methods of analysis to the historical data, thus adding to it a new perspective. The historian tends to emphasize specific incidents and individuals, whereas the sociologist takes a more generalized point of view studying trends and groups. Hopefully, by incorporating the best of each discipline, this thesis adds dimension to the existing studies.

The primary sources examined for this paper, court records and statute books support the proposition that from the outset servants were treated in a manner superior to that accorded slaves. Furthermore, at no time during the seventeenth or eighteenth centuries did this pattern change.
THE TREATMENT OF SERVANTS AND SLAVES

IN COLONIAL VIRGINIA:

A COMPARATIVE STUDY
CHAPTER I

INTRODUCTION

The precise nature of the treatment of servants and slaves in colonial America has long been a topic of controversy among historians. The problem stems in large part from the dearth of primary sources still extant concerning the two classes of laborers. Moreover, many of the sources which have survived are vague and, therefore, subject to varying interpretations.

The purpose of this thesis is, through comparative analysis, to clarify and define the status of both servant and slave. The study spans a period of seventy years, focusing primarily upon the experience in the colony of Virginia, where both systems flourished very early. Contrary to the views of many historians, but not all, analysis over time demonstrates that black servants (or slaves) occupied a lower social position than white indentured servants from the outset.

This study adds a new dimension to the argument because of its unique approach. By applying methods of sociological analysis to historical data, a more complete picture has been constructed. Many historians have limited their research to individual, albeit significant incidents - failing to provide an adequate background for their illustrations. Recent historians, more aware of the need to place the various incidents in broader perspective, have begun to utilize methods from other academic fields to broaden the spectrum of historical analysis. For example, several current biographical studies, borrowing
from the realm of psychology, have incorporated elements of personality theory. Sociological analysis is also being used more frequently to add depth to historical events.

The sociological approach differs from one strictly historical in its emphasis upon the total rather than the specific. Whereas history, for the most part, records important events and the activities of individuals, sociology is more concerned with typical events and all of the people. In fact much of the conflict among historians regarding the treatment of servants and slaves derives from the fact that some theories are based upon isolated occurrences rather than a comprehensive overview of the period. Accuracy demands a combination of the historical and sociological methods - each complementing and enhancing the other. By examining historical fact and its sociological import, this thesis portrays a more accurate picture of the attitudes in and experience of colonial Virginia with respect to the comparative statuses of servants and slaves from 1659 until 1730.

Servitude and slavery have much in common, each having been adapted to meet the unique labor needs of colonial America. Neither slavery nor servitude began as a fully developed institution, and although there was some precedent involved in their developments, the social role of servant and slave was initially undefined, both in custom and in law (Handlin, 1950: 203). In addition, both slavery and servitude were subject to the expansionist economic pressures of colonial America (Noel, 1968: 166-68). In fact, some scholars suggest that had not the blacks been brought to the New World, certain classes of whites would have been enslaved.

The facts of life in the New World were such . . . that Negroes, being the most defenseless of all the immigrant
groups, were discriminated against and exploited more than any others. Judging from the very nasty treatment suffered by white indentured servants, it was obviously not sentiment which prevented the Virginia planters from enslaving their fellow Englishmen. They undoubtedly would have done so had they been able to get away with it. But such a policy was out of the question as long as there was a King and a Parliament in England (Noel, 1968: 169).

While this view seems a bit extreme, it is clear that the social pressures faced by black and white servants in early America were similar in many ways.

On the other hand, even though the early laws of the colonies did not differentiate between servants and slaves, and in fact, did not define the status of slave until 1660, it is tenuous at best to conclude that society treated each group similarly. The colonists brought to the New World an English tradition which included discrimination against blacks (Jordan, 1969: 3-44). Recently arrived African Negroes, moreover, must have seemed heathen and very strange to the early settlers. It is therefore improbable that they were accorded the same treatment as the white, Christian, English-speaking servants (Jordan, 1969: 85-92). Indeed, Jordan and Degler suggest that prejudice and discrimination were present from the outset, playing a major role in the consequent subjugation of the black (Degler, 1959: 52; Jordan, 1962: 23).

Many historians, drawing conclusions solely from the statutes of the period, argue that the first blacks brought to Jamestown, Virginia in 1619 were sold as indentured servants rather than as slaves (Ballagh, 1902: 9-10, 27-31). The Handlins argue that because the institution

1 Compare Chapter IV, "The Historical and Legal Development of Indentured Servitude," with Chapter V, "The Historical and Legal Development of Slavery."
of slavery had no written legal framework in Virginia prior to 1660, blacks and whites served in the same manner and were accorded similar treatment until that time (Handlins, 1950: 203). Although others dispute the validity of these findings (Degler, 1959 and 1970; Jordan, 1962 and 1969; Noel, 1969; Vaughan, 1972), the fact that there is minimal recorded evidence concerning blacks prior to 1660 makes the formulation of definitive conclusions concerning the early status of the black extremely difficult. Two ideas, however, do clearly emerge from the records of that time. First, whites, although the terms "servant" and "slave" were often used interchangeably, neither served for life nor conveyed such a status to their children. Second, as early as 1640 many blacks were enslaved for their lifetimes and, in fact, passed this position to their offspring (Tate, 1972: 4-5). It should be noted, however, that during this early period not all blacks were enslaved (Noel, 1968: 165).

The differences of opinion with respect to the treatment of the laboring classes extend beyond the initial developmental stages of each system. Some historians, including Richard Morris (1946: 484), suggest that the conditions of the indentured servant did not improve substantially during the colonial period. Due primarily to the large scale transportation of convict servants to the colonies particularly during the eighteenth century, Morris concludes that servants generally remained under constant suspicion, subject to the strictest discipline. Although this conclusion seems logical, most evidence, as will be

\[^{1}\text{In other words, there is evidence that some blacks were serving under indenture and, in fact, some were freemen.}\]
shown, indicates that notwithstanding the influx of undesirables, the social condition under which the indentured servant lived steadily improved throughout the seventeenth and eighteenth centuries.

Thomas Wertenbaker (1969: 226-27) pursues a different tack to reach a similar conclusion, suggesting that in most cases slaves were treated better than servants. A slave represented a more permanent investment for a planter, and consequently, he suggests that the master was compelled by self-interest to maintain the health and strength of his slaves. The servant was bound for only a few years, and therefore, any harm to a servant would not be as costly to a master. He further states that many masters were especially cruel to their servants shortly before the period of indenture expired in hopes that they might leave hastily, thus relinquishing their freedom dues of money, clothing, or food. Wertenbaker's point is no doubt true in individual instances but, as a general statement of servant conditions, it seems, from a review of historical evidence, somewhat exaggerated.

Another line of reasoning suggests that servant conditions improved as the economic importance of slavery increased. Jackson Turner Main (1965: 156) states that immediately prior to the American Revolution the societal position of the servant was far superior to that of the slave. Although servants and slaves often performed similar work, the servant generally had better housing, clothing, and food than the slave. The diaries of Philip Fithian (1945) and Landon Carter (1965), two eighteenth century sources, support this view. The Handlins (1950: 214) state that as societal pressures upon slavery intensified, those

1See Chapter IV, "The Historical and Legal Development of Indentured Servitude," for a detailed examination of the treatment afforded the indentured servant.
affecting servants eased. Jordan (1969: 48), in addition, believes that servant conditions were improved in order to attract more immigrants, especially those with skills vital to the development of the fledgling colonies. Furthermore, as the number of slaves in Virginia increased, fear of slave insurrections and economic disruption resulted in increasingly more repressive control of slaves. The laws were calculated to create, along racial lines, a real division of interests between black and white. As "black" became synonymous with slave, regulation of the system was simplified. In the interest of control and the prevention of slave insurrection, therefore, it was necessary that all whites, including servants, were committed to maintaining the established social order.

Recognizing the possible validity of each conflicting historical view, concerning the treatment of servants and slaves in colonial Virginia, this thesis, through a detailed and comprehensive examination of selected period documents, hopes to clarify the issue. The legislative annals of the Virginia colony have been examined for the period 1619 to 1730 to obtain a general overview of the nature of treatment sanctioned by the Virginia society. To determine how those in bondage were dealt with in a local context, the court records of a typical county (Lancaster County, Virginia) were read from their beginning (1657) until 1730, each case involving servants and slaves having been extracted. This material when analysed, compared, and supplemented by other relevant data supports the proposition that black servants (or slaves) were socially inferior to the white indentured servants from the time that blacks arrived in Virginia in 1619.

The thesis begins with a discussion of the theoretical relationship between law and society. Law and law enforcement as institutions
created, adjusted, and maintained by society, reflect the beliefs, attitudes, and concerns of those who control and are affected by such institutions. The general relationship between law and society, once established, is concretized by specific reference to the Virginia experience.

After demonstrating the theoretical validity of using laws and judicial records as valid social indicators, the methodology of the thesis is explained, not only describing the records relied upon but the reasons for their importance as well. Because of the scarcity of available primary source material, the structure of the study is necessarily limited by the nature and quality of surviving material. Much research time was devoted to locating sources, and the methodology was then structured to obtain optimum use from those materials.

To place the data and its subsequent analysis in perspective, the historical background of slavery and servitude is dealt with at some length. Existing historical works were gleaned for both factual and analytical data, and compiled into chapters outlining the historical and legal developments of servitude and slavery. A comparison is then made of the legal development of each system. In this chapter, the evidence is clear that blacks were discriminated against by statute at a very early date. Although legislative records make no mention of slavery until 1660, it is quite evident, from the first enactments that slaves held a status separate from and lower than that of servants.

Previous researchers have simply examined the legislation in colonial Virginia and drawn the conclusion, on this basis alone, that because slavery was not mentioned in the statute books until 1660, forty-one years after the establishment of the colony, that the first blacks brought to Virginia must have served as indentured servants.
as that status was recognized by law and slavery was not (Ballagh, 1902: 27-31; Handlins, 1950: 203). As recent research (Jordan, 1969; Vaughan, 1972) seems to indicate, the above conclusion, although at first blush valid, is contradicted by evidence from other sources.

Written laws, as will be seen, while important, are not an exclusive indicator of societal attitudes and trends. Laws written by the governing institutions of a society reflect to a certain extent the overall attitudes of that society at a particular time. However, it is necessary to keep in mind that most of the law makers of colonial Virginia were representative of a special interest group (the planters), and therefore, the legislation of the time cannot be accepted, without scrutiny, as indicating representative attitudes of all colonists. Consequently, this thesis supplements the legislative evidence with that extracted from local court records. It is suggested that an overview of the treatment of servants and slaves in Virginia is established by examination of the laws passed over an extended period of time but that the local records better demonstrate the everyday application of the laws and must be taken into account if valid conclusions with respect to representative attitudes of the citizenry are to be formulated.

The laws themselves, when taken at face value, seem quite severe, but their application, as indicated by the court records, many times changes the final attitudinal analysis. To illustrate this point, a reading of the laws of the Virginia colony demonstrates an overriding concern with the threat of conspiracy and rebellion by servants and slaves. The prescribed punishment for such conduct is most severe and it seems logical to conclude that there was, in
colonial Virginia, a grave threat of servant and slave rebellion. However, historical records reveal to the contrary, that there were very few attempts at rebellion by either group during the colonial period.  

Conversely, if the court records alone were examined, it seems that the colonists had little, if any, actual concern over rebellion. The reality lies somewhere in between - the threat of rebellion no doubt existed - but was more perceived than real.  

The county court records when read together with the legislation of the period become increasingly meaningful, demonstrating the extent to which discrimination existed on the local level. The colonists were not nearly as fearful of many forms of deviation as the laws indicated. The laws, moreover, seem to have been enforced on the local level only when conduct, although unlawful, actually disrupted the normal operation of that social group. This selective enforcement revealed in the court records demonstrates that many of the laws enacted by the legislature were directed at anticipated rather than actual problems of social control. In addition, the records indicate that certain practices were judicially recognized and enforced prior to as well as after the enactment of a particular statute. Whereas legislation formally established and defined the systems of servitude and slavery, many aspects of the systems were socially operative and generally accepted throughout the colony prior to cognizance by the

1 The court records examined for this thesis contain only one case during a seventy year period involving conspiracy and the two slaves accused, were acquitted.

2 See Chapter VI, "Servitude and Slavery as Defined and Differentiated by Law," for a discussion of rebellion in Virginia during the colonial period.
legislature. Local court records reveal, for example, that persons were serving lifetime terms long before such status was sanctioned in the legislative records.

The local records do indicate, as would be expected, that discrimination did occur on the local level. In criminal proceedings, not only did the methods of punishment applicable to the servants and slaves differ, but after 1692, while the servant was tried by the same process as freemen, blacks were tried by special slave courts. Differential treatment also occurred in the civil proceedings of the county court. This is revealed by the fact that although few blacks were allowed access to the court, throughout the period studied, the records are replete with cases brought by servants - a majority challenging violations of their civil rights. Moreover, it is significant that the servants who brought cases before the Lancaster court were, with few exceptions, successful litigants. This attention to the civil rights of servants appears throughout the court records. If servants were held in low esteem during this time, as some historians suggest, such seemingly easy access and favorable treatment before the Lancaster court from its inception would not be expected.

The county court records, therefore, dispute the views of the various scholars who contend that servants were, on the whole, during the seventeenth century, accorded worse treatment than slaves. Their conclusions have been drawn from specific cases evidencing particularly harsh or outrageous treatment of servants. The Lancaster County records demonstrate, however, that these cases are the exception rather than the rule. If the historians who conclude that servants were generally mistreated had expanded the scope of their research to
encompass all court cases brought at that time, their conclusions perhaps would not have been so broad. Many also failed to take into consideration the fact that frequently slaves were not permitted access to the courts of record so that their mistreatment cannot be discerned from examination of court records alone. It is, therefore, unreasonable to conclude that the dearth of recorded judicial examples of slave mistreatment in the seventeenth century indicates conclusively the absence of ill treatment.

Nevertheless, although there was, as revealed by the laws and court records of the period, a certain amount of discrimination against both servants and slaves - the court itself seems to have processed cases involving these individuals quite equitably. This is particularly significant since the justices of the court came from the class of landowners who benefited from the cheap labor provided by servants and slaves. Moreover, it seems that during the period between 1660 and 1730 slaves were not treated with the same harsh discrimination characteristic of slavery in its later stages. Although it is undeniable that the law itself discriminated against "blacks" and "slaves," the treatment afforded the individual "black" or "slave" during this period was probably as good or better than at any other time during the existence of the American system of slavery.

Although the foregoing conclusion is open to debate, the records relied upon in this thesis clearly support the proposition that, from the beginning, servants were, as a general rule, accorded better treatment than slaves. Some mistreatment of servants no doubt occurred, but the historical, legislative, and judicial evidence, when examined in its totality, persuasively indicates that blacks not only were
mistreated more often but were discriminated against from their very arrival in Virginia. When legislative and court records each demonstrate discriminatory treatment of blacks over a sustained period of time, it seems unreasonable to conclude that the majority of individuals comprising the society, which sanctioned such treatment through its institutions, were actually acting in a contrary manner.
CHAPTER II

THE LAW AND WHAT IT SAYS ABOUT SOCIETY

With or without jurisprudence, codes of law can be extremely useful in telling us what a society has thought about a subject over time. . . . As for daily practice, we may be certain that a fairly dependable relationship is discernible between laws and court cases (Elkins, 1963: 244).

Law is formalized social control, characterized by explicit rules of conduct, sanctions for their maintenance and specialists to interpret and enforce them (Davis, 1962: 43). Colonial Virginia, although ultimately responsible to the English King or Parliament, developed its own institutions for enacting, interpreting, and enforcing laws. By 1640 these institutions had assumed the form they were to maintain until the time of the Revolution.¹

Every society defines its legal boundaries differently, and these boundaries continually shift (Erikson, 1966: 19). Nevertheless, it is clear that what matters most to a particular society at a specific time and place will generally be reflected in the laws of that society.

¹Initially, legislative and judicial powers were the sole responsibility of the Governor's Council. Soon after the colony became established, legislative responsibilities were assigned to a bicameral assembly comprised of the Governor's Council (an appointive body) and the House of Burgesses (an elected body). The Governor's Council acting as the General Court continued to maintain judicial authority. In 1643 the county court system was established to administer justice on the local level, and thus relieve the General Court of the burden of trying less important cases. The General Court remained the highest court in the colony, trying appeals from the county courts and those crimes punishable by loss of life or limb (Chumbley, 1938: 55, 63).
The formulation of laws is greatly influenced by social and economic conditions and, reflecting its culture, law concurrently influences the areas of life it seeks to control (Davis, 1962: 55). These statements are especially accurate with respect to the development of servitude and slavery in colonial Virginia, both systems evolving first through usage, then through codification. Therefore, the laws and court records of colonial Virginia have been examined systematically over a specified period of time for indications of societal attitudes towards servants and slaves, and the consequent development of these two systems of labor.

To succeed, the agricultural economy in Virginia required a large supply of cheap labor, and servants and slaves filled this need. As these forms of labor became indispensable to the colony's economy, and hence its survival, it became imperative to ensure their continuance, and this was achieved primarily through the legal institutions. As man has an inherent tendency to value his fellows on various levels, each man serves as a means to another man's ends. In other words kings need carpenters, and carpenters need kings. Objectively, men necessarily must assume different roles if a society is to function. Social stratification, therefore, is an important element in any larger society, providing the instruments and rewards to ensure that the valued activities of that society are performed. Moreover, it prescribes deprivations and punishments when those activities are not

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1 Whether there is a causal connection between custom and legislative enactment is beyond the scope of this thesis. The records indicate both instances of legislation preceding and following enforcement. What is important is that laws are valid social indicators. The existence of laws reflects recognition by society and its institutions of certain attitudes and behaviors.
performed (Barber, 1957: 2-7). The law is often used to solidify and maintain a system of stratification; in colonial Virginia the systems of servitude and slavery were outlined by the law and enforced by its agents.¹

Changes in the existing balance of power in a society can sometimes establish the dominance of one group. Since power tends to beget power, once a group becomes dominant its tendency is to enhance, indeed, to perpetuate its position. Once dominance is established, the controlling group typically subordinates those less powerful, thereby hampering their effectiveness as competitors. The emerging distribution of opportunities and rewards are then institutionalized, and a stable inegalitarian system is developed (Noel, 1968: 163). The law is a primary means through which the group in power can restrict the political and economic efficacy of other groups, and, in effect, mold the society in its best interests. Not only do controlling persons have primary decisional input in the formulation of laws in their favor, but they can ensure that the administration of these laws is

¹Stratification also occurred within the ranks of servants and slaves. Skilled laborers were valued over, and on many occasions given better treatment than unskilled laborers, who generally worked in the fields. Also household workers, although not necessarily skilled, were considered of a higher status than field hands. In the case of blacks, color was another basis for social differentiation - lighter Negroes, holding better positions than darker ones.

This "internal" stratification was sanctioned informally rather than by the formal institutions of society, and consequently, does not appear as a tangible in the records of the legislature and the courts. Even though it is impossible to quantify the value of this stratification - a servant's or slave's position before the law and the courts was in all probability influenced to some extent by the position he held within his social group. It would be expected that the status of a servant or slave would affect to some degree his likelihood in criminal cases to be brought before the court and in civil cases his ease of accessibility to the court, and moreover, his treatment once in the courtroom.
also favorable to them (Quinney, 1970: 35, 115). The foregoing statements aptly describe the planter class of early Virginia, men of wealth and power who, for the most part, held the positions of authority in the legislature, the courts, and the church vestries, using them effectively in their own self-interest.

It is not surprising, moreover, that the sanctions and controls of seventeenth century Virginia society were designed to perpetuate the existence of servitude and slavery as sources of labor. As the relationship between the masters and their bondsmen became more subservient and parasitic, more control became necessary (Ross, 1969: 101). When slavery proved to be the more profitable of the two labor systems, the measures taken to control the blacks became increasingly restrictive while, at the same time, controls on servants lessened.

As the numbers of Negroes increased in Virginia, a threat to the safety of the white man's person and favored position was perceived; consequently, laws and controls affecting slaves were made increasingly harsh. The empowered class needed the cooperation of all their fellow whites in order to exert more control over the slave class. Consequently, in an effort to differentiate more clearly between status and color, the colonial authorities began to ease the controls on white indentured servants. Significantly, controls on the servants were being lessened at the same time there was a major influx of criminal servants into the colony. Under normal circumstances, it would be expected that the controlling social agents would have imposed more severe sanctions on that servant element of society.

Relaxation of controls on servants appears in the legislative annals in 1705 and in the court records around 1720. This phenomenon coincides with an increase of slave importation rather than a decrease
As a general proposition, behavior which exhibits extreme departure from the existing social norms, especially that which might involve personal injury to others or serious disruption of the societal organizations is defined in the law as deviant (Jessor, 1968: 25). Stated differently, if a society feels particularly jeopardized by a kind of behavior, the severity of the legal sanctions for such behavior will be increased, with more time and energy being devoted to the task of preventing it (Erikson, 1966: 19). Court records are valuable because they indicate the amount of attention being devoted to the enforcement of particular laws. By showing which laws were enforced and to what extent, the court records enable us to distinguish the real from imagined threats to society. As enforcement on occasion preceded legislation, the local court records add to the information gained from the laws regarding threats of societal disruption.

Throughout the history of the colony both the laws and records of their enforcement support the thesis of this paper that differential treatment was accorded members of the laboring classes - servants were not treated as well as freemen, and slaves, not as well as servants. Moreover, the differentiation between servants and slaves became more pronounced as the numbers of slaves increased. In the criminal laws and their enforcement, slaves were accorded not only different and more severe sorts of punishment, but after 1692, they were also tried by a special "slave" court. Discrimination also appeared in the civil laws. Throughout this period not only were many of servant importation. The evidence found in the legislative and court records, therefore, demonstrates an increasing concern with the welfare of servants beginning early in the eighteenth century. For a more detailed treatment of these points see Chapter X, "Accessibility and Due Process in the Lancaster Court."
laws passed guaranteeing and protecting the civil rights of servants, but the courts ensured that these rights were enforced as well. In contrast, very little legislative or judicial effort was devoted to the protection of the rights of slaves. In fact, for all practical purposes, the slave, under law, had no civil rights at all.

Servitude and slavery appeared in Virginia customs prior to their legislative formalization. Most historical evidence indicates that the institutions of servitude and slavery were viable long before their legal existence was formalized (Jordan, 1969: 75). Once, however, written laws governing the two institutions began to appear, it did not take long for the legislators to create two systems of labor sanctioned and perpetuated by the formal institutions of social control. In fact, slavery was well established in law by 1680, long before there were enough slaves in Virginia to constitute any substantial threat to the economy or welfare of the citizens of the colony. Obviously, the Virginia planters envisioned an increasing influx of slaves into the colony. The final legal solidification of slavery was seemingly due to anticipated problems of social control rather than past and present threats of physical harm or social disruption.

The chronological comparison of the enactment of slave legislation and its actual implementation on the local level also demonstrated that chattel slavery in colonial Virginia was set out well in advance of the time that slaves constituted a large and threatening element of the society. Violators are chosen not solely on the basis of legal proscription, but also in accordance with the expectations of

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1 The legal development of servitude and slavery is outlined in Appendix II, "Comparison of Servant and Slave Legislation."
the community (Quinney, 1970: 117). Consequently, the records of the county court provide insight into the values and attitudes of a specific locality. When the annals of Lancaster County were examined, it became evident that the extreme concern over slave control, exhibited in the laws of the colony, was not actualized on the local level until a much later time.

Nevertheless, both the laws and court records reveal that slaves in colonial Virginia consistently were confronted with treatment of a more discriminatory nature than servants. Obviously, the colonists considered the problems of controlling the behavior of servants subordinate to the regulation of slaves. Slaves were seen as a threat, both real and imagined, not only to the existing economic and social structures, but to the very person of the white colonist.

The historical study of law and enforcement and their relationship to a particular society at a particular time is of necessity limited by the type and amount of available information. Prior to the legal comparison of servitude and slavery, it is useful to examine the nature of the existing sources and to discuss a systematic method for their study.
CHAPTER III

METHODOLOGY

Each of the thirteen colonies had different labor needs. Although servitude and slavery existed in all of the colonies, Virginia and Maryland were the only two in which both systems developed concurrently as important forms of labor.¹

¹The use of indentured labor was the exception rather than the rule in the New England colonies (Wertenbaker, 1927: 67). The property laws in the north provided that land could be divided among several heirs, whereas in the south (as in England) the laws of primogeniture insured that land would pass intact from father to the eldest son. In New England, therefore, large landed estates like those of the south, were uncommon (Faulkner, 1954: 65). Moreover, the climate and rocky soil of the northeastern colonies were ill suited for agriculture and therefore, a profitable agrarian economy was impossible (Main, 1965: 27). The small farms which did exist in New England neither needed nor could afford substantial numbers of servants or slaves to harvest the crops or till the soil.

The land holdings in most of the middle colonies, like those in the New England colonies, were small, and large numbers of laborers were unnecessary (Faulkner, 1954: 66). Because of better soil conditions, farming did prove profitable in Pennsylvania, and with large scale farming came the need for additional sources of labor. Slavery was introduced, rather unsuccessfully. In a much colder climate than they were accustomed, the blacks did not labor as effectively as in the southern colonies; and in fact many died. Moreover, there was a strong anti-slavery sentiment fostered by the large numbers of Quakers in that colony. Consequently, in Pennsylvania servants filled the need for extra labor (Herrick, 1926: 23-24).

The southern colonies had large areas of fertile land and a geography that favored transportation. Consequently, that area developed into a region of large plantations (Main, 1965:24). The one exception was North Carolina where inaccessibility to trade routes hindered the development of large scale agricultural enterprises. North Carolina, therefore, had no great demand for laborers (Main, 1965: 44). In South Carolina, the benefits of slavery were evident as early as 1670, and as a result, servants never comprised a major part of the labor force (Smith, 1961: 21, 93). Georgia was not colonized until 1732, but soon thereafter slavery had entrenched itself as the major
Because servitude and slavery developed very early in the Virginia colony, thus preceding and, in some cases, influencing their development in other colonies, a comparative study of the two labor systems suggests the use of the Virginia model.

Any historical study faces the initial problem that much original material has been lost or destroyed, and that which does survive is not as inclusive or informative as one would wish. Inferences necessarily must be drawn from sketchy material and in some cases in the absence of recorded data. Obviously, trends observed in such records are tentative and lack somewhat the statistical solidarity sought by the modern sociologist. Nevertheless, recognizing these deficiencies, valid conclusions can still be drawn from the existing material.

A study of this sort necessarily is structured around the existing sources.¹ The most useful primary sources covering an

source of labor (Blum, 1963: 72). All southern colonies developed an agriculturally based economy which required a large supply of cheap labor, a need filled most often by slaves rather than indentured servants simply because slavery proved more profitable.

¹Considering the importance of servitude in colonial America, there has been very little academic work on the subject. A major obstacle is the absence of original sources; few servants wrote diaries of any merit, and they are given little mention in works of their contemporaries. The local court records are one of the most useful sources of primary data yet even these have serious limitations (Elkins, 1963: 244). Moreover, academically, the question of slavery seems to have greatly overshadowed its early counterpart. Servitude was a temporary form of labor, important only during the colonial period, whereas slavery lasted almost a century longer and had a greater social impact than servitude.

The developments of slavery and servitude have, in the past, been studied separately with most of the materials relating to the former institution. Jordan (1969) seems to have tied together most of the work concerning the historical development of slavery in his book, White Over Black. An excellent source on Virginia is Thad Tate's The Negro in Eighteenth-Century Williamsburg (1972). Of the few works
extended length of time are the legislative records of the Virginia Assembly and local Court Order Books. The laws of the Assembly reflect the views of the colony as a whole; the local court records, those of a particular locality. Thus, this study compares servitude and slavery on two levels.

The Virginia statutes of the colonial period have been compiled by William W. Hening (1823). Using Mr. Hening's work, all legislation involving servants and slaves from 1619 until 1730 has been surveyed, compiled, and analyzed comparatively. The legislative records demonstrate the formal development of the two systems of labor, institutions formed by the needs of a new society and formalized by its laws.

The court records of Lancaster County on the Northern Neck of Virginia were selected for several reasons. The ravages of war and fire have taken their toll in Virginia and, as a result, a large number of county records, from the time of colonization until the Civil War, have been destroyed. The Lancaster County records are one of few sets that have survived intact. The transcripts are fairly legible and quite descriptive. The county, moreover, was settled early and has been described as "fairly typical . . . of any colonial county in those regions" (Smith, 1947: 277).

that have any significant references to servitude, Colonists in Bondage (1947) by Abbot E. Smith, is by far the most thorough. Another useful general reference source concerning servants is found in the section on bound labor in Richard Morris's Government and Labor in Early America (1946). The only significant study on servitude which directly addresses the Virginia experience, however, is James C. Ballagh's 1895 work, White Servitude in the Colony of Virginia - A Study of the System of Indentured Labor in the American Colonies. Other information with respect to servitude must be pieced together from scattered sources, and these works contain only cursory treatment of the comparison of the development of the two labor systems.
On a formal level, the institutions of a society are defined in its laws. On the local level these definitions are molded, altered if necessary, and enforced according to local standards and needs. Of course, many laws are strictly and uniformly enforced in all localities, but clearly, not every law is enforced in every locality, and in many cases even those which are enforced are subject to varying local interpretations. Consequently, if the laws themselves reveal much about the society which created them, then the way in which laws are used reveals even more. When laws passed to correct existing problems are frequently enforced in a locality it is obvious that the problem addressed by the legislation in fact existed in that locality.

The interplay between statutes and their local enforcement serves to indicate both the formal views of colonial Virginia society with respect to the status and treatment of servants and slaves and the actual experience of a given locality. A systematic examination of the colonial Virginia laws and the court records of Lancaster County demonstrates conclusively that, from the outset black laborers encountered more intense discrimination than white servants.

The following two chapters summarize the historical and legal development of indentured servitude and slavery providing an overview of each system from which perspective a meaningful comparative analysis can proceed.
CHAPTER IV

THE HISTORICAL AND LEGAL DEVELOPMENT OF INDENTURED SERVITUDE

The Historical Background

Indentured servitude existed as a form of labor in England even before the English began to settle the New World. Whenever the binding was made by a written contract, the terms of the agreement were prepared in duplicate on a single sheet of paper. The copies were then separated leaving a jagged or indented edge with each party to the contract receiving half of the indenture agreement (Morris, 1946: 310).

For centuries forms of bondage had existed in England. For example, villeinage, a status of limited freedom, was found there very early. It restricted the right of the servant to hold property or make contracts; he could be bought and sold at will and had to obey at all times the commands of his master or face the wrath of the master who could beat and chastise the villein at will. The condition of villeinage, moreover, was passed on from father to son (Handlins, 1950: 200). This type of bondage was prevalent during manorial times, but, by 1600, it had virtually disappeared in England (Jordan, 1969: 49). Nevertheless, in some parts of Scotland it existed well into the eighteenth century (Handlins, 1950: 200). Several important English legal treatises, Lord Coke's Institutes of the Laws of England (1628) and John Crowell's The Interpreter (1607 and later editions), contained
descriptions of villeinage. Although villeinage as a labor system no longer existed in seventeenth century England, the population remained aware of the various aspects of the system, and it undoubtedly had some influence on the development of colonial American servitude and slavery.

There were other forms of involuntary bondage in England in the seventeenth century. A person could be sold as a servant because of poverty, crime, or mere mischance, or to pay off his debts. Freedom could also be lost if a person were convicted of vagrancy, vagabondage, or merely being unemployed. His labor would be sold for a set term to the highest bidder. Orphans, bastards, and the offspring of servants could be sold at the discretion of local officials. In fact, the head of a household was entitled to sell members of his family as servants if he so desired.

Voluntary servitude existed as well. A person could enter into a formal agreement or indenture on his own (Handlins, 1950: 200-01). Youth could be contracted as apprentices, and learn a trade while in service, indeed, apprenticeship was considered the highest form of bound labor (Jordan, 1969: 52). Whether servitude was voluntary or involuntary, however, it was a status of limited freedom, servants being bought and sold at will like moveable goods or chattels. Rights to hold property and make contracts were also limited, and masters had extensive disciplinary authority over their servants.

The existing systems of bound labor adapted very well to the situation of the American colonies (Jordan, 1969: 52). Servitude very soon became the major source of labor for the early settlements, and was not superseded by slavery until the eighteenth century. The influx of indentured servants did not stop altogether until the nineteenth
century (Smith, 1947: 4). During the eighteenth century, although the bulk of the labor force in the south was slave, indentured servants still performed most of the skilled work (Main, 1965: 127; Ballagh, 1895: 348). Indentured servants continued to be brought into the colonies throughout the colonial period (Smith, 1947: 6).

The forces surrounding the extensive use of servitude are many. It served as a solution for two major problems - unemployment in England and the need for labor in the New World. Servants, of course, made a profitable cargo for English merchants who needed to fill their ships while en route from England to the colonies to pick up tobacco. In Virginia the development of a capitalistic economy, based on tobacco, created an ever increasing need for labor. Land was cheap, so the tobacco production was hindered only by the lack of a large consistent supply of labor (Brown and Brown, 1964: 7). Indentured labor was cheaper and less temporary than hired labor; consequently, colonial planters quickly bought all of the servants brought to the New World (Ballagh, 1895: 300). In Virginia from 1618 until the latter part of the century, a grant of fifty acres, called a headright, was given to every person who transported someone into the colony at their expense (Smith, 1947: 15, 42). This reward understandably increased the demand for indentured servants.

There were many reasons people came to the New World as servants. Many contracted themselves as servants to escape economic destitution in the mother country. The lot of the servant in the New World was considerably better than life in England (Ballagh, 1895: 334; Harrower, 1963), and the colonies were seen by many as a land of opportunity. In the seventeenth century social and economic advancement
was available to all that had the ability and desire to work for it.\footnote{More specifically, advancement was available for those whites with ability and desire. The records indicate that few blacks made any social or economic advancement.}

This point is demonstrated by the fact that in 1663 thirteen of the thirty members of the Virginia House of Burgesses, had come to the colony with their passage paid by people other than themselves, and therefore, presumably were former servants (Furnas, 1969: 108).

A servant who bound himself voluntarily could do so in two ways, indenture himself for the full fare of his passage prior to leaving England or pay part of his fare and become a redemptioner for the remainder. The length of servitude in the latter instances would depend upon the size of the debt. Usually redemptioners were given a period of fourteen days within which to make their own service contract. If they were unable to do so within the specified time, then they were indentured by the captain of their ship. Frequently, whole families would travel over as redemptioners. Once sold to pay for the remainder of his passage the status of the redemptioner was the same as that of any indentured servant (Smith, 1947: 20-21).

A person could become a servant against his will, as well as through his own initiative. Kidnapping or spiriting people to board servant ships bound for the colonies became a very lucrative business for many Englishmen. Ships were constantly leaving for the New World and ships' captains, asking no questions, would pay a pound or two for each prospective servant. In seaport towns, wandering children, drunkards, or simple-minded adults frequently found themselves victims of spirits and aboard a ship bound for the colonies to be sold as
servants. In 1645 Parliament passed an ordinance, which was the first governmental attempt to impede the practice of spiriting. Nevertheless, kidnapping and spiriting continued throughout the century. Although both practices occurred in the following century, they were not nearly as much a problem as they had been earlier. A large number of early servants found themselves transported through the deceptions, wheedlings, and other efforts of the "spirits." And a much smaller number found themselves carried away entirely against their wills (Smith, 1947: 68-86).1

Another form of involuntary servitude was that brought about by legal authorities. Throughout the colonial period convicts comprised a large part of the white servant population. Transportation of convicts was started by a proclamation of James I in 1614. At that time the death sentence was very frequently the punishment meted out for crimes, even those which by today's standards seem insignificant. However, to help balance out this rather harsh system, pardons were relatively easy to obtain. Transportation of convicts to the colonies was used in conjunction with the system of pardons to circumvent the death penalty in cases of robbery and other felonies (except willful murder, rape, or witchcraft). According to the Habeas Corpus Act and common law, it was illegal to use exile or transportation as a form of punishment. Consequently, a felon was pardoned under the condition that he would export himself out of the country. In 1718 Parliament declared it legal to transport certain criminals since it was felt that transportation gave convicts a chance to make a new

1Note in contrast to this almost all blacks were brought to the New World against their will.
start while at the same time being of profitable service to the homeland (Smith, 1947: 91-93).

The first convict sent to Virginia arrived in 1618. He was a carpenter who had been reprieved of a manslaughter charge because the colony needed someone with that skill. During the next four years, a number of convicts came to Virginia but large scale transportation did not begin in earnest until the latter half of the seventeenth century (Ballagh, 1895: 294). Many colonists vigorously protested convict transportation since the criminal was considered to have a socially detrimental effect. In fact, an uprising in Gloucester County, Virginia in 1663 was attributed to transported felons; and, as a consequence, a law prohibiting further transportation of felons was enacted in 1670 (Smith, 1947: 104). This law served to deter the importation of criminals until 1718 when the English Parliament decreed that transportation could be used as a punishment for criminal activities. In 1722 Virginia passed an act imposing elaborate regulations on the business of trading in convict servants. The bill would have severely curtailed the profits to be made, but it was disallowed by the English King because it rendered an act of Parliament null and void (Middleton, 1953: 73).

Despite the protests of the colonists against the transportation of convicts, there was always a ready market for their services among planters who wanted cheap labor. Their demands were such that the British government never had to force convicts on the colonies (Smith, 1947: 102). In fact, so lucrative was the market for convict labor that in 1772 several merchants offered to transport felons for the English government free of charge, well recognizing that a handsome
profit awaited when delivery was made (Middleton, 1953: 151). During
the eighteenth century, of the estimated 30,000 felons transported,
20,000 were brought to Virginia and Maryland (Smith, 1947: 119).
Consequently, convicts constituted a very significant portion of the
indentured laborers in Virginia, especially after 1718.

Servants were the major source of labor in colonial Virginia
until 1700. Then, for a brief period around the turn of the century,
there was a decrease in the number of servants being transported. By
1720, the numbers transported began to increase and this trend con­
tinued until the American Revolution. Much of this increase can be
attributed, as previously indicated, to large scale convict trans­
portation, but unemployment in England contributed as well.¹

¹The records, in most cases, do not give separate statistics
for indentured servants. The earliest count seems to be found in the
1624-25 census of the colony. At that time the total population was
1,227, of which 487 were servants, and 23 were Negroes (Green and
Harrington, 1932: 144). Then, in 1671 Sir William Berkeley reported
6,000 servants in a total population of 40,000. Wertenbaker (1969: 25)
computed that between 1635 and 1705, the number of servants coming
into the colony annually was between 1,500 and 2,000. This would mean
that during these seven decades between 100,000 and 140,000 persons
entered the colony as indentured servants. By the turn of the century
slave labor had become more popular and servant immigration temporarily
slowed down. Colonel Jenings reported to the English Board of Trade
in 1708 that "the number of white servants is so inconsiderable that
they scarce deserve notice" (Smith, 1947: 330). Hugh Jones in his
Present State of Virginia had stated that in 1724 "these servants are
but an insignificant Number, when compared with the vast shoals of
Negroes. . . ." (Jones, 1956: 130). In 1718 Parliament had passed
legislation making transportation to the new world as a servant the
punishment for various criminal activities. As expected, servant
transportation greatly increased after this date. By 1730 the effect
of this Act was being felt in Virginia as evidenced by the report of
Governor Gooch to the Board of Trade concerning the population of the
colony stating that the population increase was due largely to "the
great numbers of negroes and white servants imported since 1720" (Smith,
1947: 330). In 1765 a French traveller in the colonies wrote that "the
number of convicts and Indented servants imported to Virginia (is)
amazing" (Smith, 1947: 337). Between 1750 and 1775 the number of
servants coming into Maryland averaged 1000 each year. Smith (1947: 337)
Indentured servitude served the dual purpose of giving England an outlet for its unemployed and criminal element, while, at the same time, providing the colonies a source of cheap labor. In addition, it gave many people, who, otherwise did not have the means, passage to the New World and the opportunity to improve themselves. Many indentured servants, after serving their time, became successful citizens. Their presence contributed substantially to the rise of the middle class, and many, after completing their service, helped to establish frontier settlements. The institution, nevertheless, did have its faults, but the early years of settlement in the colonies were hard on all who came. As an institution, servitude had its purpose and, for a while, served it well. Unfortunately, in many ways servitude paved the way for the system that was to replace it - slavery.

The Legal Background

In Virginia, the system of indentured servitude evolved gradually, with practice generally preceding legal codification. The first indication of colonial servitude is found on a broadside issued by the Virginia Company in 1609. This notice, clearly an attempt to attract settlers, offered passage to America, plus food, clothing and shelter in return for seven years of service to the Company. As additional incentive, after the expiration of their term of service they were to be given a share of the profits and a division of land. Life for the servant in the New World was not as sanguine as the Company had predicted, and in the very early years of the colony there thinks that the number of servants entering Virginia during the same period was somewhat fewer. From these statistics it is apparent that servants comprised an important element of the population during various times of colonial development.
were few profits and many hardships. The Company, nevertheless, continued to transport servants to Virginia at its own expense until its dissolution in 1624. However, the adverse conditions during this period did force the Company to modify its system of servitude. The strict communal arrangements were relaxed and limited rights of private property introduced (Smith, 1947: 9-10). The Company also began to hire some servants out to private persons. Thus, early servitude began to develop many of the traits which characterize later indentured servitude (Ballagh, 1895: 284).

In 1620, the Company transported one hundred servants to be hired out to Virginia planters. This is the first example of a lump sum payment by a colonist in return for the extended services of an immigrant. Although this is the first recorded incident of such a sale, similar transactions in all probability had occurred prior to that time. The colonists, with a continuing need for cheap labor, heartily approved the Company's plan (Smith, 1947: 12-13). The census of 1624-25 showed 487 servants in a total population of 1,227 (Smith, 1947: 16); by this early date, servants had become a significant class in their own right.

The legal development, like the social development of servitude in colonial America, occurred gradually:

The 'custom of the country,' by which the lives of white servants were governed in practically all matters, grew up gradually. At first it was no more than the common average of relationships between a thousand masters and servants; later it was more carefully defined, sometimes in written indentures, more generally in the decisions of colonial judges. Before long its more important particulars were embodied in Acts passed by the colonial legislatures. The mass of this legislation became very large, while the number of judicial decisions based upon it was truly imposing, and we have finally a legal, social, and economic institution
which is a monument to the peculiar necessities of the early Americans (Smith, 1947: 226).

In 1619, the first Assembly of Virginia, meeting at Jamestown, enacted certain instructions that had been sent over by the Company. Some of these new laws involved servants. One provided that all contracts made by servants while in England be enforceable in Virginia. Another provided that all servants' contracts be registered; others prohibited servants from trading with the Indians, and forbade women servants to marry without the consent of their masters. Whipping was established as the punishment for servants who committed crimes such as swearing and Sabbath-breaking for which freemen were fined (Smith, 1947: 227).

From 1619 to 1642 very few laws directly affecting servants appeared. Nevertheless, throughout this period there grew up many customs affecting the rights of servants which were recognized by the early Virginia courts. Most important of these was the right of the master to sell or assign a servant's contract, with or without the servant's consent. In estate inventories, servants were listed as personal property and they could be disposed of by will and deed.

Penal legislation regarding servants distinguished them from the freemen by employing different forms of punishment for each. In cases where a freeman would be fined, a servant would be corporally punished. For the most serious crimes, however, both servant and freeman were punished equally - by loss of life or limb. There was one crime not applicable to freemen - running away, and to prevent recurrence of the offense runaways were punished harshly.
The servants during this early colonial period, however, did have various rights and shared many of the responsibilities of the society. Courts recognized their right to a certificate of freedom, to freedom dues (a certain amount of money, food, or clothing given when the term of service expired), and to the possession of property. Like a freeman, he was subject to the payment of a poll tax to support the government and compensate the minister, and he was liable for military service. Unless he was a convict, the servant could testify in court and was a valid witness to contracts. He could sue, or be sued, and enjoyed the right of appeal to the supreme judiciary of the colony. Finally, he could vote but it is unlikely that he exercised this right.

On the other hand, between 1619 and 1642 certain rights were restricted. The Assembly of 1639 passed a law which made it necessary for a servant to obtain the permission of his master to engage in trade. Masters could assign servant contracts freely by deed or will. For breaches of contract, a servant could be sentenced to serve an additional amount of time. Moreover, corporal punishment was a commonly accepted method for regulating the behavior of servants, and it was used by masters, as well as the courts (Ballagh, 1895: 300-07).

Between 1642 and 1726 the statute books are replete with legislation concerning servitude. Basically, these laws formalized existing practices and established general uniformity for the system. During this period, servants lost the right to vote. In 1643, the term of service for a servant without an indenture was fixed according to age; after 1657, these age judgments were made by the local courts. The Assembly of 1643 also passed an act which forbade any servant to
marry without the consent of his or her master. Violators of this law usually had one year added to their term of service. If a freeman was involved, he was required to pay a fine to the servant's master. The clear purpose of this law was to protect the master against loss of work time.

In 1662, the law recognized the right of the master to administer corporal punishment to his servant, a practice already frequently employed. Statutory acceptance of the practice was meant to serve as an additional deterrent to runaways. In the same year the Assembly directed the clerks of county courts to issue certificates of freedom to every servant upon expiration of his term, thus facilitating the capture of runaway servants. Moreover, this law protected innocent persons from arrest, and guaranteed the newly freed servant his rights as a citizen.

During the entire colonial period in Virginia there was only one servant uprising and that took place in Gloucester County in 1663.¹ This incident caused great alarm throughout the colony and precipitated further acts restricting the freedom of servants. Unlawful meetings of servants were prohibited and masters could be fined if their servants left home without permission.

The problem of controlling runaways persisted throughout the colonial period. There was enough freedom on plantations that getting away was no problem. The back country was easily accessible and servants often made their way to neighboring colonies like Maryland

¹A general uprising of servants demanding to be released from a year's service or given their freedom was plotted, but it never materialized because one of the conspirators gave the plot away (Smith, 1947: 261).
and North Carolina. Statute after statute was passed, each increasing the severity of punishment to prevent servants from absconding. Punishments began with adding time to the term of service and later included whipping and branding. As long as the system persisted, however, it was impossible to totally prevent running away.

The legislature of 1705 enacted a comprehensive code which reiterated existing servant rights and provided new ones. The law restricted the immoderate use of corporal punishment by requiring an order from a justice of the peace for "the whipping of a Christian white servant naked." The act also confirmed the right to freedom dues and established the amount: male servants were to receive "ten bushels of indian corn, thirty shillings in money, or the value thereof in goods and one well fixed musket or fuzee (fuse) of the value of twenty shillings at least;" the women were to receive fifteen bushels of Indian corn and forty shillings in money or value. To prevent masters from taking advantage of servants, the Assembly required that any agreement which altered a servant's contract be made in the presence, and with the approval, of the local court. The 1705 Act also provided that a Christian servant could be held in servitude only by other Christians. Thus, free Negroes, mulattoes, Indians, and other infidels such as "Jews, Moors and Mohometans" were prevented from holding white servants. A final right legislated at this time permitted the servant to bring a complaint into court by petition, thereby avoiding the expense of formal process, which few servants could afford.

Very few major pieces of legislation limiting the rights of a servant were enacted after 1705. In 1711 an act of the Assembly
further defined a servant as personal property, stating that servants of a person dying intestate should remain on the plantation to finish the crop, after which they would fall under the control of the executors (Ballagh, 1895: 306-23). Two years later the legislature required a servant to be licenced to own a horse (Hening, 1823: Vol. IV (1713), 49).¹

Between 1726 and 1788 the institution of white servitude gradually declined. Most legislative measures during this period served to mitigate the position of the servant. Many laws such as those punishing runaways and bastardy, were made less severe. Although the servant was still treated as property to some extent, his position differed significantly from that of a slave. While servitude was of limited duration, slavery was for life. The servant did not pass his status on to his offspring as did a slave. At no time did a master have as complete control over a servant as he did a slave. The servant had many rights established by law, a slave had none. Every law which improved the condition of the white servant made him less a chattel and more an independent contractor. By contrast, the laws enacted with respect to slaves strengthened the fundamental distinctions between the two labor systems.²

¹Notations from Hening's Statutes-at-Large include the date that the particular law mentioned was passed in parentheses.

²For a chronological outline of the legislation involving servants and slaves see Appendix I.
CHAPTER V

THE HISTORICAL AND LEGAL DEVELOPMENT OF SLAVERY

The Historical Background

The first Negroes to arrive in Virginia were transported to Jamestown in 1619 by a Dutch trader. The debate among historians with respect to the status of these early blacks continues over 350 years later, and the scarcity of surviving records from that 1620-40 period fuels the debate. Some historians maintain that these blacks arrived at a time when the status of indentured servitude already existed, and therefore conclude that Negroes were treated as were servants, being released after serving a term of seven years (Banton, 1967: 102). Essentially, these scholars argue that because the status of a slave did not exist in the laws, the system of slavery must have developed gradually from servitude through usage and custom (Handlins, 1950: 199-222). There is, in fact, evidence that before 1640 many blacks, like white servants, did become free. Perhaps the most notable of these free blacks was Anthony Johnson of Northampton County who, after gaining his freedom, acquired property and imported Negro servants of his own (Tate, 1972: 3).

It does not seem reasonable, however, that strange black "heathens" would be considered the equals of the white servants. Alden Vaughan (1972: 469-78) concludes that the black always held a debased position in the eyes of the whites, drawing most of his
evidence from censuses taken in 1624 and 1625, and from the 1627 will of George Yeardley, a governor of the colony. On all of these documents "negars" are listed separate from and below the servants. Moreover, in the two censuses the most impersonal entries were those with respect to the Negroes. The 1624 census lists none of the blacks by more than a first name, and almost half of the Negroes mentioned are listed with no name at all. The record of the following year was more complete; nevertheless, it too indicated that the black held a status inferior to that of the white servant.

Most listings for white servants included age and date of arrival, data which was essential to a determination of their length of service. Very few blacks were listed with these statistics; and furthermore, although most had been in Virginia at least six years, none of them was listed as free. The overall impression suggested by the documents used by Vaughan is that the Negro in Virginia held a significantly inferior position in colonial society from the time of his arrival. Although slavery is not mentioned in the laws of colonial Virginia until 1660, it is certain that by 1640 some blacks were serving for life, and that this status was hereditary (Jordan, 1969: 73).

The conflicting evidence, some of which proves that blacks coming to Virginia between 1619 and 1640 became freemen and some of which indicates that other blacks served for life, suggests that slavery as a fully sanctioned and defined status developed gradually, both socially and legally. The colonists did have the example of slavery in the Spanish and Portuguese colonies to follow. Precedents of English servitude were also influential in the formation of the system (Handlins, 1950: 200-02). Moreover, colonial society itself was
newly developing and very malleable; in fact, the institutions of society, as brought from England, were weakened by the transition and adapted to the new situation in colonial America:

The authority of all institutions was quickly undermined and extremely difficult to maintain during the early decades of the settlement as the settlers engrossed in the pell-mell rush for profits, dispersed themselves over the landscape, displayed little willingness to let the welfare of the whole society interfere with their own individual ambition, and tried to turn all institutions into vehicles for individual advancement (Carraty, 1970: 36).

The quoted passage seems somewhat to overstate the point, but the ambitions of the people in power clearly played a significant role in the creation of slavery. The existing institutions did nothing to discourage the development of this system; rather they adapted themselves to sustain and strengthen it.

Most recent historians agree that prejudice was an important factor in the development of American chattel slavery (Degler, 1959; Jordan, 1969; Vaughan, 1972). Negroes were "strange" and considered inferior, and therefore were discriminated against from the start. Color was an obvious characteristic that separated the black from the other colonists. Their manners must have seemed quite rude, and the fact that they spoke a different language must have made communication rather difficult. Finally, religion was a factor which fostered prejudice against blacks. Religion was a very important factor in seventeenth century life, with prejudice and discrimination against non-Christians and heathens widespread (Noel, 1968: 165-66).

The most significant factor, however, in the development of the system of slavery was economics. Profit-hungry planters needed a constant source of cheap labor and they began to use Negroes. Once
this informal system was created, the planters, as the most powerful men in Virginia, made sure that the system was legalized and maintained (Garraty, 1970: 41). As more blacks became enslaved, people began to generalize color as a status. As the system became increasingly rigid, there was less tolerance for such "marginal" individuals as free Negroes and children of mixed parentage. They, too, were soon subjugated. Color, the colonists found, served as a most effective means of social control; slaves were distinguishable on appearance alone. White supremacy developed, in part, because the slaveholders needed the support of the non-slaveholding whites to maintain the institution. This support was easily generated by elevating the meanest white to a position in society above that of the worthiest black (Banton, 1970: 17-18).

The blacks' ethnocentrism set them apart from the other indentured servants, but also contributing to their enslavement was their total lack of power. Negroes had no spokesman or organization that could help influence their position. Moreover, the cultural diversity of the blacks hindered their formation of a single identity; once established, they had become too subjugated for it to matter. The early lack of group solidarity made the blacks highly vulnerable to exploitation. The system of slavery had become fixed before the blacks had developed enough unity, identity, and sense of shared fate to challenge it (Noel, 1968: 169-71).

Winthrop Jordan (1969: 73) has divided the development of slavery into three distinct stages. The first began with the arrival of the Negroes in 1619 and continued until 1660, during which time the system evolved through usage. In 1660 slavery was, for the first time,
defined by statute. The stage continued for forty-five years with
bits of discriminatory legislation being passed along the way. The
final stage began in 1705 when an entire slave code was formulated,
thus entrenching and perpetuating the system.

Until 1670 blacks were brought into Virginia at a very slow
rate. The last thirty years of the century saw a significant rise
in the number imported, but mass transportation of slaves seems to be
strictly a phenomenon of the eighteenth century. Whereas servants
had been the major labor source of the seventeenth century, slavery
replaced it in the eighteenth century.¹

¹Unfortunately, population statistics for colonial Virginia
are relatively scarce, and the question of how many Negroes were in
Virginia at any given time after 1625 is not easily answered. The
following figures are comprised from what records do exist from the
period and the calculated estimates of scholars. Although the records
are somewhat sketchy, population trends can be determined.

Twenty-three blacks were listed in the Virginia census of
1624-25, and by 1648 it appears that their number had increased to
about 300 as compared with 15,000 whites (Tate, 1972: 12). In 1671,
Sir William Berkeley, a prior royal governor of Virginia, estimated
that of 45,000 people in the colony approximately 6,000 were servants
and 2,000 slave. A percentage breakdown indicates that in 1671 eighty-
two percent of the population was free, thirteen percent was indentured,
and five percent was slave (Wertenbaker, 1969: 26). Craven (1971),
who has made a study of the headrights for this period, feels that this
estimate of blacks is somewhat high. He suggests that Lord Culpeper's
figure of 3,000 blacks in the colony in 1681, although also open to
question, is probably closer to the fact than Berkeley's. After 1690,
the slave population showed a steady and rapid increase. By 1708 one-
third of the inhabitants of the colony were slaves. The composition for
1754 was approximately 168,000 whites to 116,000 blacks, meaning that
over forty percent of Virginia's population was enslaved. By 1763
or 340,000 people, almost one-half of the Commonwealth's inhabitants
were black. From that date until the time of the American Revolution
in 1776, slaves continued to constitute almost one-half of the popula-
tion in Virginia (Green and Harrington, 1932: 136-40).
The historical precedents of slavery reveal much about its development. Nevertheless, a full understanding of the system requires some discussion of its legal development.

The Legal Background

By the 1640's evidence that Negroes were "serving for life" began to appear in the court records. The earliest documentation is a 1640 case concerning three runaway servants, one a Negro. The court punished the two white servants by extending their service, but the black was sentenced to serve for the rest of his life. Other cases of the period also indicate that slavery was a status becoming established in custom (Tate, 1972: 5).

In 1639 the Virginia Assembly passed its first law demonstrating differential treatment for blacks. This law stated that all persons were required to possess arms and ammunition except Negroes (Hening, 1823: Vol. I (1639), 226). Three years later a law was enacted providing that black women, since they generally labored in the fields, were to be considered tithable (Hening, 1823: Vol. I (1642), 242). The first legislative evidence that Negroes were serving for life is a 1661 statute. A section of the act stated "that in case any English servant shall run away in company with any negroes who are incapable of making satisfaction by addition of time," the servant must make up the Negro's lost time as well as his own (Hening, 1823: Vol. II (1661), 26). In the following year, another discriminatory statute appeared, declaring that if any Christian should commit fornication with a Negro man or woman, he or she would have to pay double the usual fine (Hening, 1823: Vol. II (1661-62), 114-15).
Although estimates indicate that the proportion of blacks in 1670 was probably no more that five percent of the total population, legislators were evidently concerned about controlling this element of the population. In an effort to give whites stronger regulatory powers over their slaves, the Virginia Assembly, in 1669, passed a law stating that it would not be considered a felony if a master or overseer killed a slave while punishing him (Hening, 1823: Vol. II (1669), 270). This law marked an important turning point in the treatment of the slave - he had lost the right to legal protection.

A second statute, passed in 1680, was entitled an "Act for Preventing Negroes Insurrections." Although designed to prevent slave rebellion (of which there seems to have been very little real threat at the time), the practical effect of the law was to curb the slave's freedom of movement and ability to resist the white man. Specifically, it prohibited the slave from carrying weapons and from leaving his master's property without a certificate of permission. The act

1 The legislators reasoned that a man would not kill a slave without reason, as the slave represented a valuable investment. This is in marked contrast to the existing laws governing the punishment of servants. A 1668 law made it legal to discipline runaway servants with moderate corporal punishment. Never was it excusable under law to kill a servant under punishment.

2 The first recorded slave rebellion was attempted on the Northern Neck of Virginia in 1687, seven years after the passage of this law. During the entire colonial period there were only nine uprisings or threats thereof in Virginia (Tate, 1972: 110).

3 The lawmakers were especially concerned that gatherings of blacks under "pretense of feasts and burialls" would lead to insurrections (Hening, 1823: Vol. II (1680), 481).
further prescribed severe punishments for blacks found lurking in obscure places or who lifted a hand against a Christian. Finally, a slave who resisted capture could lawfully be killed (Hening, 1823: Vol. II (1680), 481).

At this same time there began to appear in the legislative records attempts to define a status for the slave distinguishable from that for a servant. Color was the first and most obvious criteria used for discrimination, and a 1661 law provided that all Negro children were to serve in the same status as their mothers (Hening, 1823: Vol. II (1661), 170). This, of course, meant that the children of Negro women serving for life would also serve for life, thus making slavery hereditary by law.

Another method used by the early legislators to distinguish "foreign" types for the purpose of enslaving them was religion. Apparently, some Negroes had attempted to gain their freedom by arguing, sometimes successfully, that they had been baptised.\footnote{Warren Billings examines two cases of freedom suits made on the grounds of baptism, one successful and one unsuccessful in "The Cases of Fernando and Elizabeth Key: A Note on the Status of Blacks in Seventeenth-Century Virginia" (1973: 467-74).} In 1667, however, the legislature stated that baptism would not alter the status of a person serving as a slave (Hening, 1823: Vol. I (1667), 260). A law passed in 1670 established that "all servants not being Christians imported into this colony by shipping shall be slaves for their lives, but, what shall come by land shall serve" until thirty years of age, or for twelve years depending on their age (Hening, 1823: Vol. II (1670), 283). This statute was repealed in 1682 and a new, more inclusive one enacted, stating that all Negroes, Moors, Mulattoes,
or Indians, if their native country was not Christian at the time of
their first purchase, even though they themselves might be converted
were to remain slaves for life (Hening, 1823: Vol. II (1682), 490-92).
By 1682, therefore, the fact that a black or any foreigner was a
Christian would no longer protect him from enslavement.

Prejudicial legislation was not confined only to slaves. Free
blacks likewise felt the pressure of legislative discrimination. In
1670 an act was passed making it illegal for free Negroes or Indians
to own servants other than ones of their own nation (Hening, 1823:
Vol. II (1670), 280).

Throughout the seventeenth century, legislative measures were
passed which deprived Negroes of their personal and civil liberties.
Although many laws were passed guaranteeing servant rights, almost all
of the laws dealing with the rights of slaves were restrictive in
nature.¹ In 1705 all the random statutes regarding slavery previously
passed were codified, thus establishing Virginia's first "slave code"
(Jordan, 1969: 82).

By 1705, the Virginia system of slavery was well rooted. The
slavery of this period was less harsh, than that of the nineteenth
century, but the basic restriction of rights had become statutory by
this time (Garraty, 1970: 51). A slave could not act as a witness
against a white person in either civil or criminal cases, nor could
he be a party to a civil suit. The slave was given no moral or
religious instruction, nor was he given the benefit of education
except in very rare cases. By this time the penal codes fashioned

¹For a listing of the legislation involving slave rights see
the table on page 111.
more severe punishment for the slaves than for whites accused of similar offenses. Moreover, much to the disadvantage of the blacks, slave trials were not processed in the same manner as those for whites (Banton, 1967: 121).\(^1\) The system required the submission of the slave to not only his master, but to every white man.\(^2\)

\(^{1}\)In 1692 the Assembly set up a special Court of Oyer and Terminer for the trial of slaves accused of capital crimes (Hening, 1823: Vol. III (1692), 102). For an explanation of these special slave courts see Chapter VII - "The Lancaster Court."

\(^{2}\)See Appendix I for a year by year comparison of the laws concerning servants and slaves.
CHAPTER VI

SERVITUDE AND SLAVERY AS DEFINED AND DIFFERENTIATED BY LAW

The legislative records of colonial Virginia demonstrate clearly that from the time servitude and slavery were first mentioned in law discrimination existed. Even before each status had attained full statutory definition - some differentiation between laws governing blacks and whites was evident. Not only were different standards of conduct established for servants and slaves, different forms of punishment were used as well.

To better understand the discrimination in written law it is useful to breakdown the laws according to type. The laws passed by the colonial Virginia Assembly relating to servants and slaves can be classified according to the purpose of the law, as either civil or criminal.

Civil law consists of those laws enacted to define the status and rights of each group and to standardize these definitions throughout the colony. The English common law which served as a basis for colonial law had made no provision for indentured servitude and slavery as these institutions were unique to the new world. As a general proposition these definitional laws simply formalized many of the practices already existing in Virginia.

In many cases separate statutes were enacted to cover very similar situations - the difference being that one set of laws were for servants and one set for slaves. Even when both statuses are mentioned in the same law, often its applicability differs between the two groups.
Specifically, there were two types of civil law relating to servants and slaves. The first simply defined the position or status of the person serving as servant or slave. The primary function of these "laws of position" was to standardize practices throughout the colony and to provide the local courts a gauge with which to determine more easily the proper method to enforce regulations concerning servants and slaves. Laws setting the time of service for servants coming into Virginia without indentures were simple laws of definition. An act passed in 1705, for example, stated that all Christian servants brought into the colony without indentures, if above the age of nineteen, were to serve five years and, if under nineteen, until age twenty-four. The county courts would adjudge the ages of these servants who would then serve according to the legally prescribed formula.

The following table illustrates the major pieces of definitional legislation passed before 1730.

<table>
<thead>
<tr>
<th>Year</th>
<th>Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>1642</td>
<td>Time set for servants coming into the colony without indentures</td>
</tr>
<tr>
<td>1661</td>
<td>Provision for certificates of freedom</td>
</tr>
<tr>
<td>1661</td>
<td>Women servants working in the ground to be considered tithable</td>
</tr>
<tr>
<td>1680</td>
<td>Servants imported not to be tithable until age 14</td>
</tr>
<tr>
<td>1711</td>
<td>Servants employed in crops to remain working in crop after death of master until crop is finished</td>
</tr>
</tbody>
</table>
A second type of definitional law is that prescribing the rights of and restrictions upon servants and slaves. The laws defining rights and imposing restrictions served to outline more fully the actual status of servants and slaves in colonial Virginia society. Between 1642 and 1730 over twenty laws were passed guaranteeing servants a wide variety of rights. By contrast, only two laws were enacted during this eighty-eight year period conferring any rights or privileges upon the slaves.¹ In fact, the status of slave was continuously defined in terms of restriction of rights. For a year by

¹The two laws that did guarantee rights for slaves served to benefit the masters as much as the slaves. In 1705 a law was passed allowing masters to defend their slaves in courts of Oyer and Terminer. Since slaves were valuable property, masters were actually being given the right to protect their property. When slaves on frontier plantations were permitted to be licenced to carry arms in 1723, it was not only for self-protection, but to protect their masters as well.
year listing of the laws guaranteeing and restricting the rights of servants and slaves see the tables in Appendixes III and IV.

These tables, in addition, very well illustrate the basic differences in the nature of the laws enacted to define the boundaries of servitude and slavery. A few examples show the distinction. While servants were given the right to own property in 1661, eight years later it is clear that slaves were considered mere chattels when a law was passed stating that masters were not to be charged with a crime if they killed a slave while punishing him. In 1705, when masters were prohibited from using immoderate corporal punishment on servants, they were permitted to dismember incorrigible slaves. The law of 1705 entitled "An Act Concerning Servants and Slaves" combined all previous legislation into a unified code. By this time, the boundaries of what constituted servitude and slavery had been formally established by statute. Future definitional laws would serve only to readjust these boundaries.

Most criminal law defined crimes that could be committed by anyone regardless of status. The discriminatory element of these laws was that the nature of the punishment varied with the status of the criminal. Corporal punishment was used much more extensively on slaves than on either white servants or freemen.\(^1\) There were some crimes that only applied to indentured servants and slaves, simply because of the nature of their obligation to their masters. Examples of such laws are those concerning running away, resisting one's master, and plotting insurrections.

\(^1\)The types of punishment used in eighteenth century Virginia and their applicability to people of different statuses is discussed in Chapter VIII - "Criminal Proceedings in the Lancaster Court."
Several interesting contrasts come to light when the various types of laws are examined with respect to their effects upon servants and slaves. Strict definitional law was applied to both groups in an attempt to outline and standardize status throughout the colony. In addition, both servants and slaves were subjected to restrictive legislation, although it is clear that a larger number of these laws were directed primarily against slaves. Most important, however, during this period many laws were passed guaranteeing servants various civil rights, while only two can be construed as safeguarding the rights of slaves.

The criminal laws passed concerning the two statuses differed somewhat in their actual intent. A large majority of the criminal laws which were passed to remedy existing problems were directed at servants. In contrast, most laws regulating slavery, were more anticipatory in nature. In other words, the laws controlling the behavior of servants for the most part were passed and enforced only when absolutely necessary to ensure tranquility and to maintain the existing social order. On the other hand, most of the laws regulating slavery were passed before slaves constituted a large or threatening portion of the population and, in fact, before many of the problems legislated against actually existed. For example the "Act Against Negro Insurrections" was originally passed in 1680 yet the first recorded attempt at such a rebellion did not occur until 1687. By contrast, the law passed to prevent servant insurrections was passed in reaction to an attempted rebellion in Gloucester County in 1663. Although all major restrictive legislation directed at slaves was enacted long before 1705, very few cases involving slaves were brought
in the Lancaster court before 1707. Cases involving servants appear in the records as soon as, or on some occasions even before, the enactment of legislation regulating that specific crime.

Slavery may not have been such an "unthinking" decision. It seems that the Virginia legislators were aware quite early of the potential economic importance brought about by a large permanent work force. They also realized from the examples of other slave-owning societies the problems of control when a large portion of a society was enslaved. By the time slaves did become a significant economic element of the population and a threat to the slaveholders, the Virginia colonist had already established a system of bondage well regulated by law. As control on the local level became more necessary to the overall operation of the society and the maintenance of the economic system based upon slave labor, the local courts began to enforce the discriminatory legislation more strictly to ensure the perpetuation of slavery.

To determine if the same discrimination existed locally as is evident in the legislative annals of colonial Virginia, the court records of Lancaster County, Virginia have been examined. To appreciate the operation of the Lancaster Court, however, some understanding of the procedures of the county court is essential.
CHAPTER VII

THE LANCASTER COUNTY COURT

Lancaster County and Its Records

The records of the Lancaster County court were chosen because they are one of the few sets of Virginia county court records that have survived intact, which is a major consideration when the study extends over a period of time. Moreover, most of the records are legible, and a large number of early records are not. In addition, they are thought by other scholars to be typical for their area and time (Smith, 1947: 277).

Lancaster County is located on the southeastern tip of the Northern Neck of Virginia. Located on the coast it was settled by 1648 and established as a county in 1651. In 1669 it was divided into two counties - Lancaster and Middlesex. Because of its early settlement and the early development of servitude and slavery there, Lancaster makes a particularly good area of concentration for the study of the growth of these two institutions.

The county court records are very valuable as a resource for the study of colonial history. Besides the fact that they are some of the few primary sources still existing, they are rich in their content and scope. The following description was written by a historian who has devoted much of her time to the study of these early records.

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1 The Northern Neck is the peninsula between the Potomac and Rappahannock rivers.
(The) records, like those of other Virginia counties, comprise local court orders, wills, deeds, inventories and some proclamations of the governor and council as well as laws, orders, and other material coming from the provincial government. Some personal letters, bills, agreements and other papers were also recorded there as being the best means for their preservation. Although some of the material may seem commonplace and repetitious, there is much that is highly diversified and important, resulting from the fact that the local court exercised jurisdiction over many matters now controlled by individuals, public and private organizations, and the federal government.

Particularly illuminating are the prosecutions and litigations growing out of a newly-transplanted society, one with many features of different classes or groups with interests at times far apart, with some individuals ruthlessly exploiting opportunities for advancement, some irresponsibly following the inclination of the moment, and many, their reach exceeding their grasp, entangled in debt. It was a society with wrongs to be redressed and with rights and security to be maintained; and for these, it found in the institution of the county court a technique and surety of incomparable value. Again and again the colonists have recourse to the law; and often, too, the law seeks them out to restrain or punish. It is from the resulting court records that the historian frequently gets data that give a picture of the life of the time or fill in historical gaps or even, along with other materials, point the way to certain conclusions. Indeed the character of the records, and especially the litigant element, makes them a fruitful field for research into such matters of historical scholarship as the modification of the Old World pattern by the New World environment; the beginnings and subsequent workings of some institutions; the relation between various groups, activities, events, movements, time sequences in the development of society; or into other matters informational or interpretative. Indeed, many categories of human endeavor, interests, and ideas exemplifying "the process of civilization" are found within the Virginia court records, making them truly "a chapter in human experience" (Ames, 1947: 179-80).

To better understand the county court records, it is essential to understand the county courts of Virginia and how they functioned. Therefore, it is useful to outline the county court system of colonial Virginia generally and as it applied to Lancaster County.

The Historical Background of the County Court in Virginia

County or monthly courts were created by an Act of Assembly in response to growth in the colony which made the use of one
centralized court inconvenient both in terms of the number of cases to be handled and in terms of its location with respect to the new settlements. The county courts had jurisdiction over limited civil and criminal cases. By the end of the seventeenth century, however, restrictions on the civil jurisdiction of these courts were removed and the county courts could determine all civil causes brought for an amount in excess of twenty shillings; those for lesser amounts were decided by single justices. These decisions could be appealed to the higher courts (Chitwood, 1905: 74).

In addition, county courts had authority to probate wills and administrate estates, to punish vagrants, to indenture orphan and bastard children, and to decide cases involving masters vs. servants or vice versa. Moreover, the court was in charge of local matters such as tax collection, public roads, and ordinary licensing (Talpalar, 1968: 149). Criminal jurisdiction, however, was more restricted because the Assembly considered juries composed of frontiersmen less experienced in judicial matters, not to be trusted with the fate of criminals charged with high crimes. Accordingly, the jurisdiction of these courts was limited in cases "touching life or member" to referring cases with merit to one of the Quarter Courts.

The county courts generally convened once a month in the "county town," where there was a courthouse which served as a repository for official documents such as the court order books, land records, and marriage licenses. Typically, there was also a jail, whipping post, ducking stool, stocks, pillory, and a gibbet. As the importance of the courthouse as a central meeting place increased ordinaries and stores grew up around it (Talpalar, 1968: 149-50).
Justices of the county courts were appointed by the governor from lists of nominees submitted by the existing justices of that county. Appointments were renewed at the discretion of the governor, but because the custom was to approve most existing justices, appointments were generally for life. Consequently, the county courts were pretty much self-controlling bodies. The number of justices on a particular county court varied according to place and time, but usually ranged from eight to eighteen. The attendance of these justices was often irregular and when a justice was absent too often he was fined. Even though the control of the county courts was in the hands of a few, the integrity of the judiciary was considered most important. Judges could be removed for such indiscretions as drinking on court days. Upon taking the oath of office they had to swear to "do equal right to all manner of people, great and small, high and low, rich and poor, according to equity and good conscience and the laws and usages of this colony" (Talpalar, 1968: 149).

Decisions were reached by majority vote of the justices, but the county courts could also hold trials by jury. The juries were composed of twelve bystanders, selected each day the court was in session. Jurors on county courts were required to be property holders of at least fifty pounds value (Chitwood, 1905: 80-83).

Despite certain defects, the county courts seemed well adapted to local needs and there were few complaints regarding their fairness (Chitwood, 1905: 93-94).

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1Study of the Lancaster court records seems to indicate that the justices there were adjudicating equitably. Even servants and slaves brought before the court were accorded due process of law. See Chapter X - "Accessibility and Due Process in the Lancaster Court."
All major crimes committed by white persons were tried in Williamsburg before one of the Quarter Courts. It was quite inconvenient and most expensive for the counties, especially those on the frontier to send the prisoner, his guards, twelve jurors, and an average of four or five witnesses to the capital for each trial. Consequently, a special Examining Court, composed of the county justices and held in the county, was created. The purpose of this court was to determine if there was a reasonable chance of conviction before sending the criminal to Williamsburg for trial. This system worked to the advantage of the criminal against whom the evidence was not particularly strong (Scott, 1930: 48-49).

When a prisoner who had committed an offense that was triable at the General Court was captured, the justices were summoned to meet at a time not less than five, nor more than ten, days from the time of arrest. The prisoner and witnesses were heard, and if the court decided that the case was strong enough for a trial in Williamsburg, all witnesses were required to post bond to ensure their appearance in court there. The Examining Courts, thus, served a function similar to today's grand juries in making a probable cause determination but not a final decision of guilt or innocence (Scott, 1930: 60-62).

Punishment for slaves accused of capital crimes was felt to be most effective in deterring other slaves from crime if administered immediately. Consequently, an Act of Assembly in 1692 provided that the governor, upon notification by the sheriff that a slave accused of a capital crime was in custody, could issue a special commission of Oyer and Terminer to such persons of the county that he deemed fit (usually the justices of the peace). Because of the inconvenience of
this process, the justices of the peace were later given a standing commission of Oyer and Terminer for cases in which slaves were accused of capital offenses (Chitwood, 1905: 99-100). These special courts were held in the counties, rather than in Williamsburg, and without a jury. In 1705 an act was passed which allowed masters to testify in defense of their slaves "as to matters of fact." It also provided public reimbursement for the owner if his slave were executed. Furthermore, it was decided, in 1748, that a divided vote of the justices (it is uncertain whether "divided" refers to a tie vote or any non-unanimous vote) constituted acquittal. This act was in the interest of the slave and ultimately the slave owner since slaves were too valuable an investment be be hanged without due consideration (Scott, 1930: 46).

Presentments and indictments were made by the churchwardens and the grand jury. The churchwardens were supposed to make presentments for fornication, adultery, drunkeness, abusive and blasphemous speaking, absence from church, Sabbath-breaking, and other moral violations. This type of duty was rather thankless and although they had this power during the entire colonial period, it was seldom used (Chitwood, 1905: 83-84). The fact that the fines in these cases went toward the benefit of the poor did not increase the activity of the churches in crime prevention (Scott, 1930: 71).

In 1645, a statute provided that grand juries should be appointed to act as public accusers to make presentments to the county courts. The county courts soon became lax with respect to use of the grand jury, however, and in 1677 a law was passed declaring that each court which failed to swear a grand jury at least once a year would be fined two
thousand pounds of tobacco, each juror who failed to attend court without a lawful excuse fined two hundred pounds. The sheriff summoned twenty-four freeholders, usually twice a year, in May and November, to serve on the grand jury. If less than the working number of fifteen appeared, then the absentees were fined (Chitwood, 1905: 85-86). Usually the grand jury was summoned one month in advance, thus giving the members time to discover violations of the law before the next court convened (Scott, 1930: 69).¹

Officials of the court — justices, sheriffs, and constables — were supposed to report any violations of the law that came to their attention. This hardly proved an effective "police" force, however, and therefore, the churchwardens and grand jurors were given the specific duty of reporting criminal violations. In fact, any private citizen could report criminal violations and in most cases he would receive some part of the resulting fine as a reward. To ensure further crime detection, masters were held responsible for reporting breaches of law committed by their servants or slaves (Scott, 1930: 52).

After arrest, the prisoner was taken for a preliminary hearing before a justice of the peace as soon as possible. After listening to the prisoner and witnesses, if any, the justice would decide on a charge. If the prisoner were charged with a felony or could not furnish bail, he was committed to jail. Trials were conducted quickly,

¹During the period studied the grand jury of Lancaster County was used so seldomly that it is impossible to study grand jury transactions over a period of time. This is particularly unfortunate because such presentments are made by people who normally do not hold positions of authority, and consequently, demonstrate at a most basic level what the people of a certain locality consider deviant at a particular time.
not only in deference to the rights of the prisoner, but to minimize the expense of keeping him in custody and to give him less opportunity to escape (Scott, 1930: 56-57).

The Virginia county court system was organized in 1643. Despite the lack of modern methods of communication the Lancaster court operated very much according to regulation and always with awareness of the latest legislation. Nevertheless, the Lancaster court, as most courts, was sensitive to the local as well as the central needs and trends of society.

What the Local Records Reveal About the Legislation

Although many laws were enacted by the colonial Assembly during the period under study only certain of them were enforced in the Lancaster court. One inference which may be drawn is that not all the behavior considered deviant by the legislature was so considered in Lancaster County. Another is that threatened deviant behavior which prompted a colony-wide law never posed a threat in this locality. Generally, cases found in the local court annals involve matters of particular concern to the locality, and the Lancaster court records, therefore, should reveal much about that part of colonial Virginia in terms of its unique needs, the behavior it considered deviant, and the problems which threatened its stability and growth. For a breakdown of the servant and slave cases brought into the Lancaster County court between 1660 and 1730 see Appendix II.¹

¹From this chart many of the actual problems and their extent with respect to each of these classes is evident. Much minor slave crime was not processed in court and consequently, does not appear in the record. It would be hasty to conclude, however, that simply because a certain crime or problem is not mentioned in the records it did not, in fact, occur in Lancaster County.
One obvious conclusion can be made with respect to the laws relating to the control of servant and slave insurrections. Although these laws had been on the books since 1663 and 1680, respectively, rebellion of either group was not seen as a problem in Lancaster County. There is no evidence in the court records that meetings of servants were prohibited at any time. Moreover, in the only case found wherein slaves were charged with meeting illegally their punishment was merely a warning.

Another interesting pattern which reveals additional information about the laws is the order in which the legislation and enforcement appear in the records. As might be expected, much of the legislation which appears in the following table precedes its enforcement by several years.

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1 The records for the court on October 10, 1716 indicate:

that one James Burns of this county sometime in September last permitted a great concourse of Negroes to assemble at his plantation and there to revell and drink in a very disorderly manner under pretense of a feast made by two of his Negroes (viz.) Duke and Adam in Contempt of the Laws and to the terror of his Majesties subjects. . . .

Burns was ordered to appear at the next session of court and Duke and Adam were taken into custody. The record for the next court stated that James Burns appeared and

satisfied this court that he was ignorant of the day of making the said feast and that he contributed nothing thereto. . . .

he also assured the court that there would be no such meetings in the future. The court dismissed the case and released the two blacks. Lancaster, at this time, evidently did not fear a united rebellion of the slaves, or surely the court would have punished the offenders more severely.
TABLE 2
EXAMPLES OF LEGISLATION PRECEDING ENFORCEMENT

<table>
<thead>
<tr>
<th>Law</th>
<th>Passed</th>
<th>Appeared in Court Records</th>
</tr>
</thead>
<tbody>
<tr>
<td>Servant right to complain about ill-treatment in court</td>
<td>1642</td>
<td>1658</td>
</tr>
<tr>
<td>Certificates for headrights to be made before county court</td>
<td>1657</td>
<td>1659</td>
</tr>
<tr>
<td>Ages of servants to be adjudged in courts</td>
<td>1657</td>
<td>1659</td>
</tr>
<tr>
<td>Penalty for bastardy</td>
<td>1657</td>
<td>1662</td>
</tr>
<tr>
<td>Provision for viewing bodies of servants before burial</td>
<td>1661</td>
<td>1663</td>
</tr>
<tr>
<td>Right to ownership of property (Servant)</td>
<td>1661</td>
<td>1663</td>
</tr>
<tr>
<td>Reward established for capturers of runaways</td>
<td>1669</td>
<td>1670</td>
</tr>
<tr>
<td>Court of Oyer and Terminer for trial of slaves established</td>
<td>1692</td>
<td>1713</td>
</tr>
<tr>
<td>Dismemberment as correction for incorrigible slaves could be authorized by the local courts</td>
<td>1705</td>
<td>1707</td>
</tr>
<tr>
<td>Masters to be repaid from public funds if one of his slaves is punished by execution</td>
<td>1705</td>
<td>1714</td>
</tr>
</tbody>
</table>

There are also many cases in which the converse is true—certain activities, rights, and crimes were judicially recognized prior to legislative enactment. As can be seen from the following table, a majority of these cases involve protection of the rights of servants. In Lancaster County servants were contesting unfair contracts, their freedom, and freedom dues prior to the time that the Assembly guaranteed such rights. This treatment before the court seems to demonstrate that a respect for servants and their rights existed in Lancaster County very early. From the beginning in 1657 the court
records are replete with cases involving servants and their rights. Not only were servants allowed the privilege of judicial process, but, in a majority of cases, the court decided in their favor. It does not seem possible that this would occur in a society where discrimination against servants was the accepted practice.

TABLE 3

EXAMPLES OF ENFORCEMENT PRECEDING LEGISLATION

<table>
<thead>
<tr>
<th>Law</th>
<th>Appeared in Court Records</th>
<th>Passed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contracts between masters and servants to be made before a justice of the peace</td>
<td>1665</td>
<td>1676</td>
</tr>
<tr>
<td>Contracts between master and servant to be made before county courts</td>
<td>1665</td>
<td>1705</td>
</tr>
<tr>
<td>Penalty for selling free persons as slaves</td>
<td>1671</td>
<td>1705</td>
</tr>
<tr>
<td>Right to petition for freedom in court (Servant)</td>
<td>1657</td>
<td>1705</td>
</tr>
<tr>
<td>Right to petition for freedom dues in court (dues guaranteed)</td>
<td>1662</td>
<td>1705</td>
</tr>
<tr>
<td>Servants could choose to be whipt in lieu of fines</td>
<td>1657</td>
<td>1705</td>
</tr>
<tr>
<td>Penalty for servant violence against master</td>
<td>1662</td>
<td>1705</td>
</tr>
<tr>
<td>Penalty for servant pretending a skill</td>
<td>1660</td>
<td>1705</td>
</tr>
</tbody>
</table>

1See Chapter IX - "Civil Actions in the Lancaster Court" - for more specific information regarding the treatment of servants before the Lancaster court.
CHAPTER VIII

CRIMINAL PROCEEDINGS OF THE LANCASTER COURT:
SERVANT AND SLAVE - ADJUDICATION AND PUNISHMENT

We have seen a significant difference in the treatment accorded servants and slaves in the written law of colonial Virginia. One would expect that the same disparity would carry over into the courts which enforced the laws. To determine whether this was in fact the case, the Court Order Books of Lancaster County, Virginia\(^1\) were examined and all cases dealing with servants, slaves, and free blacks were extracted. One of the most obvious differences in the treatment of servants and slaves is the kind of punishment meted out for violation of the law.

The punishment used by the courts for various crimes was for the most part set by law. Nevertheless, the local courts were allowed a certain amount of discretion in the administration of criminal punishment. If there were mitigating circumstances in a case, the justices might impose a lighter sentence than the law dictated or release the accused with a warning. The purpose of this section is to compare the way in which servants and slaves, as prescribed in the law were punished in the Lancaster County court.

Very seldom in colonial Virginia was a jail sentence imposed as a punitive measure; more often, fines or corporal punishment were

\(^1\)The period studied extends from 1657 (the date when the first records begin) to 1730 by which time both servitude and slavery were flourishing in Lancaster County.
used. Although a servant could "pay" a fine by serving extra time, slaves were serving for life and, therefore, the addition of time would have been meaningless. By necessity, then, the punishments used for slaves were entirely corporal in nature. It must be noted that in the case of servants, corporal punishment was available and sometimes used as an alternative to a fine.

There was a wide range of corporal punishment available to the local justices, but whipping was by far the most frequently employed. This form of castigation was usually performed by the county sheriff immediately after the trial in the amount of twenty, thirty, or thirty-nine lashes "on the bare back well laid on." Servants had the right to choose whipping in lieu of additional service to pay for a fine. Some Lancaster servants (including several women) decided on this alternative.

Each county was required to erect and keep in repair a pair of stocks and a pillory. Criminals would be locked in these devices for a prescribed number of hours during which time they were objects of public ridicule, great crowds of people gathering to enjoy the

1 Although some of the colonial statutes approved imprisonment as a means of punishment, such a sentence was seldom imposed. The public expense in housing prisoners for extended periods was prohibitive. Moreover, the conditions of the prisons were deplorable and the records in fact show that various prisoners, held in the eighteenth century Virginia jails, had frozen to death. Finally, escape from these establishments was relatively easy. For all these reasons, the prisons of that time were not used for incarceration but rather for pretrial detention and as repositories for runaway slaves or servants until they could be claimed by their masters (Chumbley, 1938: 127).

2 Payment of the fine in money was usually impossible since most servants were impecunious.
plight of the offender. These contrivances must have relied primarily on their mere existence to deter crime, however, because they were infrequently used. The pillory served also as a back board for another form of corporal punishment - ear cropping. This rather gruesome practice was accomplished by first nailing the ear to the pillory and then, after a set amount of time, usually an hour, separating the criminal from the pillory by cutting off the ear. The Lancaster Court used ear cropping infrequently during this period and, when it was used, slaves were the recipients.

Corporal stigmas such as ear cropping and branding were employed to punish those convicted of crimes not serious enough to warrant execution. In addition, these signs served as a warning to the community at large of the criminal tendencies of the individual. Branding was usually accomplished by burning the letter "M," to denote murderer, or "T," to denote other felons on the brawn of the left thumb (Chumbley, 1938: 127). During the period studied the Lancaster court ordered one slave's ears cropped for burglary; a second slave was branded for manslaughter.

The emphasis on corporal punishment may seem unduly harsh by today's standards, but it must be remembered that such punishment was a substitute for imprisonment which would have been even harsher because of the deplorable conditions of the jails. Moreover, the colonists were concerned with deterring crime and felt that, to be effective punishment needed to be sufficiently harsh to create fear among prospective deviants.

Punishment inflicted for a capital crime, loss of life or limb, by law applied equally to slaves, servants, and freemen. The
servant charged with a capital offense, just as the freeman, would be brought before a local "examining court," and if this court found reasonable grounds to believe the defendant was guilty, he would be sent on to the General Court for a trial by jury. The slave, on the other hand, was tried by a local court of Oyer and Terminer, without a jury (Hening, 1823: Vol. III (1692), 102).

The main purpose of the courts of Oyer and Terminer was to guarantee a more speedy trial for slaves. A fast trial meant less time lost from work if the slave were acquitted; if found guilty, the speedy infliction of punishment would serve as a warning to other slaves. Trying slaves in the locality also lessened the public expense required to keep the slave in custody until the next court session in Williamsburg and to transport him and other participants once the court convened.

On the other hand, speedy local trials sometimes benefited the slaves, as they meant shorter time that the slave would have to spend in jail. It seems, too, from examining the Lancaster County records that, on occasion, it was to the advantage of a slave to be tried by people who knew him or the other people involved in the case. For example, in 1713, Tom, a slave, was brought to court for stealing various articles of food and clothing from a neighboring house. Although this was a capital offense, the court, finding the slave "not deserving of death," released him after he had received thirty-nine lashes (Lancaster Court Order Books: Feb. 6, 1713). Unfortunately, a year later the court's familiarity with this slave worked to his disadvantage. Upon being found guilty of feloniously breaking, entering, and stealing some bacon and a knife, he was sentenced to death (Lancaster County Court Order Books: June 11, 1714).
In another Lancaster case, Jocob, a slave, was found guilty of burglary, but because the crimes were committed in the company of his mistress and a servant the court mitigated his punishment. Rather than being executed he received thirty-nine lashes, had his ears removed, and was thereafter released (Lancaster County Court Order Book: October 31, 1723).

These lesser punishments were not always the case, however, because the Lancaster court (between 1660 and 1730) did sentence four slaves to hang for the crimes of murder, rape, and burglary. The chart on the next page illustrates the punishments used by the special slave courts in Lancaster County.

Had any white man, servant or free, been convicted of murder, rape, or burglary, he too, could have received identical punishment. Whites charged with commission of a "life or limb" crime, however, could only be "examined" in the Lancaster court and, if probable cause were found, sent on to the General Court for trial on the merits and sentencing. Between 1657 and 1730 there were a number of free whites examined and sent on to the General Court, but only one servant was brought before the Lancaster court accused of a crime serious enough to merit a capital trial. That the records of the General Court have been destroyed is unfortunate, however, since the outcome of these cases cannot be determined and the useful comparison between punishment of white men and slaves for identical offenses thereby impossible.

For crimes in which the punishment was loss of life, the very nature of the punishment dictated that the ultimate result fall equally on all found guilty. Although hanging was the usual method of execution in colonial Virginia (and the only one employed by the Lancaster court...
### TABLE 4

**SLAVE OYER AND TERMINER TRIALS**

<table>
<thead>
<tr>
<th>Date</th>
<th>Slave</th>
<th>Charge</th>
<th>Pleased</th>
<th>Found</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2/6/13</td>
<td>Tom</td>
<td>Breaking, Entering, and Stealing</td>
<td>Guilty</td>
<td>Guilty of Entering and Stealing</td>
<td>39 Lashes</td>
</tr>
<tr>
<td>6/11/14</td>
<td>&quot;</td>
<td>Breaking, Entering, and Stealing</td>
<td>Guilty</td>
<td>Guilty of the same</td>
<td>Hanging</td>
</tr>
<tr>
<td>5/30/22</td>
<td>Wapping</td>
<td>Murder of another Slave</td>
<td>Guilty</td>
<td>Guilty of the same</td>
<td>Hanging</td>
</tr>
<tr>
<td>10/31/23</td>
<td>Jacob</td>
<td>Numerous Burglaries</td>
<td>Not Guilty</td>
<td>Guilty (punishment mitigated because crimes were committed in the company of whites)</td>
<td>Ears removed &amp; 39 Lashes</td>
</tr>
<tr>
<td>2/25/23</td>
<td>Harry</td>
<td>Rape of a Servant Girl</td>
<td>Guilty</td>
<td>Guilty of the same</td>
<td>Hanging</td>
</tr>
<tr>
<td>11/9/24</td>
<td>Robin</td>
<td>Theft</td>
<td>Not Guilty</td>
<td>Guilty of the same</td>
<td>Hanging</td>
</tr>
<tr>
<td>1/17/25</td>
<td>George</td>
<td>Murdering another Slave</td>
<td>Not Guilty</td>
<td>Guilty of Manslaughter</td>
<td>Branded</td>
</tr>
</tbody>
</table>
during the period studied) other more uncomfortable methods of execution were sanctioned. The use of the more gruesome methods seems to have been a characteristic of the early seventeenth century when maintenance of the internal solidarity of the colony was essential to its survival. In the late seventeenth and early eighteenth century, it seems that the method of inflicting the death penalty, whether hanging or some other method, was determined more by the crime committed than by the status of the person committing the offense. In the eighteenth century a change is evident, gruesome executions being employed primarily to punish slaves. Nevertheless, the nature of the crime still strongly influenced the method of punishment - particularly gross crimes being punished by more violent types of death.\(^1\)

Just as capital crimes committed by servants and slaves were processed differently, so were cases involving minor crimes. Servants had the right to be tried before the county court for minor offenses, including bastardy, violence against their masters, petit theft, and running away. A slave suspected of a minor crime like lifting a hand

\(^1\)Most slaves during the eighteenth century were executed by hanging. There are cases recorded, however, of execution being accomplished by other means. Poisoning one's master was considered a particularly horrible crime and when an Orange County slave, Eve, was convicted of poisoning her master she was drawn on a hurdle to the execution place and burned at the stake (Tate, 1972: 98).

There are also cases where a slave, after being executed, had his head cut off to be displayed in the community as a deterrent to other slaves who might be contemplating criminal activity. In 1772, two Augusta County slaves were convicted of murdering the same man. According to the court record:

> it appearing to the Court that they had plotted and conspired to do the murder some time before it was done and that their heads be severed from their bodies and that one of their heads be affixed on a pole below this Town near the road at the rocks and the other near the road leading from Williams Mitchell's to Staunton (Augusta County Court Order Books: March 24, 1772).
against a Christian, possessing arms, or running away, need not be brought before the entire court to be sentenced and in fact, the normal practice was for him to be sentenced by a single justice outside the courtroom (Tate, 1972: 92). While the Lancaster court records, therefore, do not indicate minor slave crime, the mere fact that minor slave crime does not appear in the trial records does not mean that it did not occur. To the contrary, there is indication that these crimes did occur. Slave runaways illustrate this point. For the period studied, although the Lancaster records do indicate that one black was brought before the court for running away,\(^1\) the court certified reward for the capture of eighteen runaway slaves during the same period.\(^2\) This clearly demonstrates that slaves in fact were running away but their punishment if and when apprehended was not formally determined in the courtroom.

Typically, a master disciplined his own slaves. A 1669 law indicates that masters were indeed administering their own "justice," stating that if a slave died while under correction, the master was exempt from being charged with a felony (Hening, 1823: Vol. II (1669), 270). In 1723 the Assembly amended this law to permit indictment of a white man if it could be proven through the testimony of one credible witness that the death of the slave resulted from a willful or malicious act (Hening, 1823: Vol. IV (1723), 133). This provision offered the slave a little more protection under the law, but very

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\(^1\)This slave was mentioned in the records only because he ran away in the company of white servants (Lancaster County Court Order Books: Sept. 19, 1679).

\(^2\)Interestingly, all eighteen of these slaves were captured between 1710 and 1730. This seems to be another indication that the conditions of slavery were becoming less bearable after the turn of the seventeenth century.
seldom was it enforced in the colonial Virginia courts. No such presentments were brought to the Lancaster court between the enactment of the 1723 amendment and 1730.

Certain crimes could be committed only by servants and slaves, with running away a primary example. Punishment, however, was quite different depending on the status of the accused. A servant caught after running away received added service - double time for the period gone in addition to extra time to compensate for the expense of his return (Hening, 1823: Vol. II (1657), 116-71), and moderate corporal punishment as well (Hening, 1823: Vol. II (1668), 266). A slave serving for life, of course, could not be punished by the addition of time and by necessity his discipline for running away was always corporal, and harsher than that given servants. In addition to the normal punishment of whipping, habitual slave runaways could be deterred by dismemberment (Hening, 1823: Vol. III (1705), 461), which usually meant the loss of a foot (Tate, 1972: 97). In Lancaster County, the usual punishment for such incorrigibles was the loss of the toes rather than the entire foot. Between 1707 and 1730 the court permitted dismemberment of five slaves.  

Finally, and most severe, runaway slaves could be killed if they resisted capture (Hening, 1823: Vol. II (1672), 299) or were found "lurking in obscure places" (Hening, 1823: Vol. II (1680), 481).

Certain laws were directed specifically at slaves. One such example was the "Act for Preventing Negroe Insurrections" which

1 All five slaves who were ordered dismembered by the Lancaster court belonged to Robert "King" Carter (two in 1707, one in 1722, and two in 1725). Carter was by far the largest slave owner in the Virginia colony, and it might be expected that he would have more problem in controlling his slaves than others who with relatively few, could use a more personal, and probably more effective, method of slave control.
prohibited slaves from carrying a "club, staffe, gunn, sword, or any other weapon of defense or offense" and from leaving their master's grounds without permission. Moreover, this act provided that any slave lifting a hand against a Christian would receive thirty lashes (Hening, 1823: Vol. II (1680), 481). Both of these crimes were considered minor at that time and, consequently, their commission is not recorded in the Lancaster Court Order Books.

Some legislation was aimed specifically at servant offenses. It was quite easy for a servant, particularly a white one, to pass as free. Therefore, the laws regulating runaway servants were more intricate than those affecting slaves. A special provision was enacted to punish servants who had forged or had used forged certificates in attempting to pass as free (Hening, 1823: Vol. III (1705), 453). Runaway servants changing their names or disguising themselves to avoid capture faced the punishment of six months additional service (Hening, 1823: Vol. IV (1726), 174).

One particularly problematical crime which applied to women servants, but not to female slaves was bastardy (Hening, 1823: Vol. II (1657) 115; Vol. III (1705), 452). A child born to a slave woman was a welcome addition to a slave holder's estate, but a master had no claim to a child born to his unmarried servants. Therefore, to compensate the master for lost time from work caused by the pregnancy, the new mother had additional time (usually a year) added to her length of service. Moreover, if she could not pay or find someone to pay the churchwardens her fine for fornication, she had to serve extra for this.

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1 The crime of bastardy was also enforced against free white women (they would be fined), but much less frequently than in the case of servants.
Between 1660 and 1730 there were seventy-nine women brought before the Lancaster court charged with bastardy. As a baby was undeniable evidence against the woman - all were found guilty and had time added to their term of service.

Clearly, from the time the Lancaster County court began adjudicating, there was discrimination against the servants and slaves. Much of this discrimination was the result of that court's enforcement of discriminatory laws. The types of punishment designated by law and used by the court differed according to the status of the accused. Freemen were punished differently from servants, and servants differently from slaves. For servants and slaves the differential punishment can, in large part, be attributed to the nature of their status, and the consequent legal prescriptions for punishment. Inadequate documentation makes it impossible to determine the extent to which personal prejudice on the part of the justices affected the nature and severity of the punishments accorded each class. There is, however, evidence that the judgments of these courts were for the most part quite equitable.¹

The following case from the Lancaster records well illustrates the differential treatment received by freemen, servants, and slaves. In October, 1723, a case came before the Lancaster court involving a free white, a servant, and a slave - all accused of the same crime. Jacob, a Negro male, was presented for stealing three bags of tobacco and one-half bushel of Indian corn belonging to Henry Horne. Martha Flint (the slave's mistress) and Mary Moulton (a servant to the same)

¹This point is discussed at length in Chapter X - "Accessibility and Due Process in the Lancaster Court."
were presented for aiding and abetting the crime and both were found guilty.

The mistress was sentenced to pay all fines and to stand in the pillory for one hour. In addition, she was imprisoned for one "Kallender month" without bail and then "to continue on in gaol until she find security for her good behavior for one year." The servant, received thirty-nine lashes and was thereafter released (Lancaster County Court Order Books: October 9, 1723).

The slave was merely "examined" at this time and several weeks later a Court of Oyer and Terminer was held. The theft of one hog belonging to Charles Pasquet was added to the charges previously mentioned. Jacob pleaded not guilty, was found guilty, but the record reveals:

As much as it appears that the sd. facts were done at several times and in the company of Christian white persons of the family wherein the sd. Jacob Resided the Court were of the opinion to mitigate his punishment.

This "mitigated" punishment consisted of having his mistress post security for his future good behavior, receiving thirty-nine lashes, and having both ears cropped "close to his head." (Lancaster County Court Order Books: October 31, 1723).

Discrimination also appeared in the different court procedures used for servants and slaves. A servant received the same type of trial as a freeman. Not so in the case of slaves. Minor crimes were tried before a single justice - if at all - rather than before the whole court. Capital crimes were tried before a special slave court in the county, rather than before the General Court of the colony. The court records in Lancaster County, then, confirm the evidence found in the
legislative annals - discrimination, especially against slaves was apparent on the local level very early.
CHAPTER IX

CIVIL ACTIONS IN THE LANCASTER COURT

At common law civil actions were those "brought to recover some civil right, or to obtain redress for some wrong not being a crime or misdemeanor" (Black's Law Dictionary 312, Rev. 4th ed. 1968). Many cases brought before the Lancaster court by servants took the form of civil complaints. Basically, three types of action were brought: complaints of ill-usage, suits for freedom, and suits for freedom dues. Throughout the period under study servants frequently took advantage of their right to a court hearing and in most cases the court ruled in their favor. All complaints of ill-usage were acted upon by the Lancaster court, but frequently the court's decree was merely a warning to the master involved. Nevertheless, this does seem to have been a fairly effective deterrent because only once was the same master brought before the court for a second offense. In sharp contrast, the records are devoid of complaints by blacks of ill-usage.

There were suits by blacks for freedom during this period, but, as the following table illustrates, they were infrequent. The obvious

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1 One servant, Elizabeth Clifford had complained "that she goeth daly in danger of her life of the Negroes belonging to her sd. master. In order to remedy her situation the court ordered her "sold at an outcry" to another master (Lancaster County Court Order Books: February 18, 1674). This case is a typical example of a servant complaint of ill-usage, and, as in most cases, the servant was given redress for her grievances.

2 Blacks during this period had very limited access to the court. For further discussion see Chapter X - "Accessibility and Due Process in the Lancaster Court."
reason is that most blacks were serving for life and, therefore, precluded from bringing such actions. The table lists all suits for freedom brought before the Lancaster court between 1660 and 1730 and their disposition. In cases involving blacks the "M" represents mulatto and the "EI" East Indian.

TABLE 5

SUITS FOR FREEDOM

<table>
<thead>
<tr>
<th>Year</th>
<th>WHITE</th>
<th></th>
<th>BLACK</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Successful</td>
<td>Unsuccessful</td>
<td>Successful</td>
<td>Unsuccessful</td>
</tr>
<tr>
<td>1660-69</td>
<td>16</td>
<td>11</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>1670-79</td>
<td>17</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1680-89</td>
<td>17</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>1690-99</td>
<td>4</td>
<td>5</td>
<td>1(M)</td>
<td>0</td>
</tr>
<tr>
<td>1700-09</td>
<td>17</td>
<td>4</td>
<td>0</td>
<td>2(EI)</td>
</tr>
<tr>
<td>1710-19</td>
<td>4</td>
<td>0</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>1720-29</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

The few blacks who sued for their freedom did so on the grounds of a contract\(^1\) or because they had been set free in their master's will. It is to their credit that the Lancaster justices and juries honored wills setting slaves free because the laws of the colony discouraged this practice. As would be expected white servants had more opportunity of

\(^1\)Although the vast majority of blacks were slave, a few were contract laborers or apprentices and consequently, could petition the court for their freedom upon expiration of the contract term.
being awarded freedom than blacks since servants generally had contracted their services for a specified period of time, and the primary issue in suits for freedom was the precise time at which the contract was to expire.

Another interesting trend evident from the following table is the sharp decline in the number of servant suits for freedom after 1710. Such a result cannot be attributed to a decrease in the servant population of Lancaster County at this time since a similar decline is not exhibited in other servant figures.

TABLE 6

SERVANT CASES IN THE LANCASTER COURT

<table>
<thead>
<tr>
<th>Year</th>
<th>Runaways</th>
<th>Bastardy</th>
<th>Ill-usage</th>
<th>Freedom Dues</th>
<th>Freedom Suits</th>
</tr>
</thead>
<tbody>
<tr>
<td>1660-69</td>
<td>41</td>
<td>6</td>
<td>5</td>
<td>6</td>
<td>27</td>
</tr>
<tr>
<td>1670-79</td>
<td>49</td>
<td>8</td>
<td>3</td>
<td>8</td>
<td>17</td>
</tr>
<tr>
<td>1680-89</td>
<td>34</td>
<td>12</td>
<td>1</td>
<td>4</td>
<td>18</td>
</tr>
<tr>
<td>1690-99</td>
<td>37</td>
<td>9</td>
<td>7</td>
<td>3</td>
<td>9</td>
</tr>
<tr>
<td>1700-09</td>
<td>33</td>
<td>25</td>
<td>0</td>
<td>5</td>
<td>21</td>
</tr>
<tr>
<td>1710-19</td>
<td>31</td>
<td>10</td>
<td>0</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>1720-29</td>
<td>28</td>
<td>7</td>
<td>2</td>
<td>4</td>
<td>4</td>
</tr>
</tbody>
</table>

Fewer suits are likely the result of an improved and more effective system of contracts. The fact that fewer servants were forced to sue for their freedom also indicates that masters were becoming more
lenient with their servants while simultaneously becoming less tolerant of the slaves. 

Another right guaranteed to servants by the Lancaster court was having their contracts of service recorded. Although this right did not appear in the Virginia statutes until 1705, the Lancaster court recorded servant contracts as early as 1665. The purpose of recordation was to protect servants from unfair contracts forced upon them by unscrupulous masters. During this period no black servant had a contract recorded by the court.

Basically, there were two kinds of voluntary contracts. First, a servant could agree to work for an additional length of time in return for his master's promise to relieve him from hard labor, to educate him in a trade, or upon occasion, to provide him medical treatment. One example of this type of contract read:

Robert Clark servaunt to Robert Beverley, appeareing at this Court is willing to serve his master one yere longer than hee came in for provided his said master will during all his tyme free him from workeing in the ground, carryeing, or fetching of railes or loggs or the like things and beareing at the morter, and keepe him to his trade either at home or abroad, which the said Beverley doth promise. All which the Court doth order to bee entred upon record (Lancaster County Court Order Book: September 11, 1667).

There are cases in which a servant agreed to extra service for being purchased from a former master.

Another kind of contract recorded by the Lancaster court (particularly in the 1720's) is actually a substitute for a formal

1 Historians generally agree that "concomitantly with the Negroes' descent to slavery, white servants gained increasingly liberal terms of indenture" (Noel, 1968: 165). This easing in the control of servants while tightening control of slaves seems to begin in Lancaster County around 1710-1720.

2 Although a black would have had this right if he had entered into a contract, this was an infrequent occurrence in colonial Virginia as very few blacks had contracts.
trial and sentence. Specifically, if a servant had committed some minor crime against his master, rather than having the master press charges, the servant would come to court and "voluntarily agree" to serve additional time. Abbot Smith, who has studied many court records of this period, states that this type of contract is unique to the Lancaster court. Referring specifically to that court, Smith has described it as "very fond of registering agreements for extra service, made for all manner of reasons" (Smith, 1947:391).

An interesting trend appears when the number of voluntary contracts made over an extended period is examined.

TABLE 7

VOLUNTARY SERVANT CONTRACTS

<table>
<thead>
<tr>
<th>Year</th>
<th>1660-69</th>
<th>1670-79</th>
<th>1680-89</th>
<th>1690-99</th>
<th>1700-09</th>
<th>1710-19</th>
<th>1720-29</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number</td>
<td>6</td>
<td>0</td>
<td>1</td>
<td>3</td>
<td>7</td>
<td>20</td>
<td>26</td>
</tr>
</tbody>
</table>

A significant increase can be noted after 1710 in the number of servants being permitted to enter into voluntary contracts. These contracts usually were advantageous to the servant, again indicating that society through the legal system was becoming more indulgent in its treatment of white servants in order to gain their support against the blacks.

Many laws of this period established or formally guaranteed many servants' rights. It is evident from an examination of the Lancaster County records of the period that the court was upholding such rights. On numerous occasions servants came to court complaining of mistreatment, seeking freedom or freedom dues, and the majority of these suits
were successful. Several cases indicate that the court even recognized
the right of servants to own property.¹ Several servants lured into
unfair contracts were freed (Lancaster County Court Order Books: January
10, 1671; September 14, 1681; February 14, 1699; July 9, 1702; and
August 9, 1704).²

On the other hand, only two occasions were found during the
same seventy year period in which the court was a vehicle for the
protection of slaves. Twice masters were presented by the grand jury
and fined for working their Negroes on Sunday (Lancaster County Court
Order Books: November 9, 1715; and May 18, 1717). The classification
of these two cases as protective of Negro rights is somewhat question­
able, however, as the primary motivation for these presentments was
moral regulation of the masters rather than protection of the blacks.

In summary, the court records from 1660 to 1730 indicate that
the white servant made frequent use of the Lancaster court to enforce
a variety of civil rights. Contrariwise, the slave had few, if any,
civil rights and the records show no suits for mistreatment or for
freedom dues. Although eight suits for freedom were brought during the

¹In 1668 a master had recorded in court that he had given his
servant a calf (Lancaster County Court Order Book: July 8, 1668). A
servant died in 1681 having an estate of sufficient substance to merit
official appraisal by court appointed officials (Lancaster County Court
Order Book: January 11, 1681).

²In one of these contracts a servant was tricked into lifetime
servitude.

A condition presented to this court made between Richard Syms
and John Hobbs for the service of the sd. Hobbs during life,
for which there appears noe consideration given to the sd.
Hobbs is declared voide and ordered to bee cancelled and the
sd. Syms who is ordered to pay costs (Lancaster County Court
Order Book: January 10, 1671).

This supports the argument of Noel (1968: 169) that some whites were
not above enslaving members of their own race.
seventy year period, it is evident that they were exceptional cases. To understand more fully the reasons for the disparity in the number of cases brought by servants and blacks, it is necessary to discuss a most basic consideration - the access of each group to the judicial system.
A most noticeable contrast between the treatment of servants and slaves revealed by study of the Lancaster County records is the accessibility to the court afforded each group. The number of cases which mention servants far exceeds those involving slaves. This holds true for both the civil petitions by, and criminal actions against, each group.\(^1\) An obvious reason for a greater number of cases involving servants is that there were more servants than slaves in Lancaster between 1660 and 1700. This trend continued, however, into the eighteenth century when there were probably as many or more slaves than servants.\(^2\) Comparative population trends can be gleaned from an examination of the number of servants and slaves brought into the Lancaster court for age adjudication. For the child servant this procedure would establish his length of service and set the time at which he was considered tithable. Slave children were adjudged

\(^1\) As shown in the previous chapter, from 1657 on servants found the Lancaster court very accessible. For a comprehensive breakdown of servant and slave crime processed by this court between 1660-1730, refer to Appendix II - "Servant and Slave - Crimes and Suits (1660-1730)."

\(^2\) By 1708 one-third of the Virginia population was estimated to have been slave. (See the footnote on page 43.) The population composition of Lancaster County was probably very similar. With a decline in the number of servants coming in during the early 1700's (See the footnote on page 31), it seems safe to assume that sometime just after 1700 the number of slaves in Lancaster County surpassed the number of servants.
The following table illustrates the number of servants and slaves adjudged during each decade between 1660 and 1730.

TABLE 8

NUMBER OF SERVANTS AND SLAVES ADJUDGED IN LANCASTER COURT

<table>
<thead>
<tr>
<th>Year</th>
<th>1660-69</th>
<th>1670-79</th>
<th>1680-89</th>
<th>1690-99</th>
<th>1700-09</th>
<th>1710-19</th>
<th>1720-29</th>
</tr>
</thead>
<tbody>
<tr>
<td>Servant</td>
<td>186</td>
<td>138</td>
<td>49</td>
<td>103</td>
<td>22</td>
<td>17</td>
<td>2</td>
</tr>
<tr>
<td>Slave</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>7</td>
<td>40</td>
<td>44</td>
<td>106</td>
</tr>
</tbody>
</table>

The numbers alone do not accurately portray the servant and slave importation trends during this period. Although the number of servant adjudications decreased markedly after 1700, many servants were still being transported to Virginia. By 1700, however, most young servants came to the colonies with indentures which obviated the need for an age adjudication. The decrease noted in the records, therefore, is due in part to an improved system of registration rather than a demographic change (Smith, 1947: 231-32).

With respect to criminal offenses cases involving slaves appear in the records infrequently because a master was permitted to punish a slave for a minor crime without first obtaining the permission of a justice of the peace. Since there was no requirement to obtain a

---

1 A master paid a tax on all male servants fourteen or more years of age. All slaves twelve years or older were subject to the tithe.
court order to punish a slave, few masters sought judicial approval. 1

Between 1660 and 1730 thirty criminal cases involving slaves were brought before the Lancaster court. 2 The following table demonstrates a dramatic increase in the number of cases brought after 1700.

TABLE 9

NUMBER OF CASES INVOLVING SLAVES

<table>
<thead>
<tr>
<th>Year</th>
<th>1660-69</th>
<th>1670-79</th>
<th>1680-89</th>
<th>1690-99</th>
<th>1700-09</th>
<th>1710-19</th>
<th>1720-29</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>7</td>
<td>6</td>
<td>12</td>
</tr>
</tbody>
</table>

This increase interestingly took place long after the enactment of most slave legislation, indicating that a majority of the slave legislation was passed before major problems of control actually existed. The passage of the 1705 slave code seems to be a legislative and social turning point in the treatment of the slave. The increased number of slaves being brought in the Lancaster court after 1705 can be attributed in part to their increased numbers. Nevertheless, the progression of the legislation affecting slaves enacted between 1660 and 1705 indicates tighter and tighter control. As the laws became more severe it is to be expected that judicial action would reflect this trend.

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1 Slaves were brought to court only if charged with an offense which occasioned public redress. Minor misdeeds, therefore, were not recorded in the court records.

2 Four cases during this period involved non-slave blacks thus bringing the total to thirty-four.
Throughout this period it has been demonstrated that blacks were discriminated against in legislation and in their actual treatment. In interesting contrast to this trend of colonial society, discrimination before the Lancaster court between 1660 and 1730 seems minimal. The justices had sworn to "do equal right to all manner of people, great and small, high and low, rich and poor, according to equity and good conscience and the laws and usages of this colony" (Talpalar, 1968: 149), and this they seemed to be doing.

The law itself, as has been shown, made elaborate distinctions between the status of servitude and that of slavery, and the court records reflect this distinction especially with respect to the dearth of suits by blacks to gain freedom or redress for mistreatment. Nevertheless, the judgments of the Lancaster court appear equitable, given the nature of the laws with which it dealt; most of the biased treatment, it is submitted, occurred outside of the courtroom itself. It is true that laws themselves discriminated, as did the social processes which channeled people into the court. Although statistics are not available, it seems persons of lower statuses were more likely, even then, to be brought into court on criminal or moral charges than persons of the middle or upper classes. These latter groups held power and to maintain it, ruled the subjugated classes with a firm hand. A primary example is the legislation attempting to control the runaway problem.

With respect to civil actions, the lower classes had a more difficult time than those of the advantaged groups in vindicating infringements upon their civil rights. In many instances, these people simply lacked the knowledge, means, or legal protection
necessary to bring a case before the justices. A comparison of cases involving servants and blacks, however, indicated that the servant had much greater accessibility to the court than the free Negro,\(^1\) or the slave, who, for practical purposes, had none.

As has been shown, servants who brought their own civil petitions to the court generally were quite successful. The large number of servant cases indicates judicial accessibility during this period. In addition, the mere status of "servant" seemingly did not hamper the administration of justice - an examination of the case records shows the Lancaster court reaching an equitable result in virtually all cases.

The free black also seems to have received equitable treatment before the court. Illustrative are the cases in which a free black bound his child as an apprentice. The black child was apprenticed in the same way as a white child. Specifically, the black was bound for the same length of service (until age twenty-one) and for the same terms (taught to read and write, provided for properly, taught a trade in the case of a male, and given freedom dues at the end of service) as prescribed by law for a white child (Lancaster County Court Order Books: August 10, 1709; April 9, 1712; and June 11, 1729).

The fact that free blacks were not prejudged in criminal cases simply because of their color is also evident in the records. When Edward Nichen, a free black, was presented by the Grand Jury for selling

\(^1\)Free blacks found the court more accessible than the slaves. On a few occasions they brought presentments of their own before the court. There were only four cases in the Lancaster records between 1657 and 1730 involving free blacks, but since there were very few free blacks living in Lancaster County during the period studied, the numbers are not surprising.
"Syder att his dwelling house . . ." in violation of the law, he pleaded not guilty and was found not guilty by a jury. Two free black women were found guilty of bastardy in 1728 but received the same punishment (a fine) as would white women accused of the same crime. However, there were so few free blacks in Lancaster County during the period studied, that the conclusions drawn about their treatment are somewhat tentative.

Neither did the Lancaster court evidence prejudgment in cases involving slaves. For example when Adam and Duke, two slaves, were brought before the court in 1716 charged with holding a disorderly assembly of Negroes "under pretence of a feast," the court released them with a warning although the law which prohibited such conduct permitted corporal punishment. Evidently, this particular meeting offered no real threat to the local people and the court took this into consideration when fashioning its decree.

The treatment of slaves before the special courts of Oyer and Terminer during this period also seemed equitable. Although the law creating these special courts was passed in 1692, the first Oyer and Terminer trial in Lancaster was not held until 1713.¹ In many of these cases extenuating circumstances served to mitigate the punishments ordered by the court (no prior crime - February 6, 1713; being led astray by whites - October 31, 1723; mitigating circumstances - January 17, 1725). Slaves found guilty of crimes for which they could have been hanged were punished corporally and released.

¹There were two slave cases in the intervening period (May 11, 1698 and November 10, 1709) which were serious enough to justify this type of trial. Why the court did not choose to request its commission for the special trial is unclear.
In 1723 a law was enacted permitting slaves to appear as witnesses in cases involving other slaves (1723), and almost immediately the Lancaster court heard such witnesses. In a case tried February 12, 1723, Harry, a slave, was convicted of raping a servant girl on the testimony of the victim, a white freeman, and a slave. In another case George, a slave, accused of murdering another slave had the charges against him reduced to manslaughter on the basis of the testimony of two whites and three slaves (January 17, 1725). From the description of the proceedings in such cases it is evident that the court processed the cases of slaves as impartially as the law would permit. This, of course, was not true in the later stages of slavery, when considerations of discipline and control became overriding factors in courts trying slaves (Stampp, 1956: 226-27).

The attention to due process in cases involving servants and slaves before the Lancaster court is even more interesting in view of the composition of the court itself. The Virginia county court was typically a self-perpetuating body composed of respected and successful members of the community; the Lancaster court was no exception. When a servant brought a civil complaint to court it was typically against a man of the same station as the members of the court, perhaps one of their friends, or even one of them. Under these conditions one would expect legal injustice and exploitation of the servants. This evidently was not the case in Lancaster County; in fact, Abbot Smith has concluded with respect to the typical pattern of court action in servant litigations throughout colonial America that a "high proportion of cases in which the servant received fair treatment, and a great many in which the humanity displayed by the magistrates did them credit" (Smith, 1947: 246).
Examination of the Lancaster County records indicates that this overriding sense of justice extended to the blacks adjudicated as well.\(^1\)

The previous conclusion, however, refers to equitable treatment before the court, and is not meant to imply that either servants or slaves received equally judicious treatment from their masters. The number of servant complaints of ill-usage well illustrates that servants were being mistreated. Moreover, during this period three cases were extracted in which individuals were charged with beating a servant to death (Lancaster County Court Order Books: September 12, 1666; July 8, 1674; and July 4, 1704). Although mistreated, the servant had statutory and judicial protection. The slave, on the other hand, had neither. Consequently, no cases were found involving the mistreatment of slaves. To conclude, however, that slaves were not mistreated seems unreasonable. It is submitted that mistreatment of slaves during this period was widespread. First, since servants were abused it seems a reasonable inference that slaves were also abused. More importantly, there were no formal sanctions against ill-treatment of slaves. Historians (Morris, 1946; Wertenbaker, 1969) who argue that servants during this period received harsher treatment than slaves draw their conclusions strictly from written records. The absence of recorded material in this instance, it is submitted, does not necessarily support the inference. As society did not consider mistreatment of slaves an abuse of anyone's rights, no formal sanctions were created to prohibit the practice. In fact, the society passed laws permitting masters to correct slaves for their crimes and

\(^1\) It should be emphasized here that these conclusions are based only on the Lancaster records before 1730.
misdemeanors by administering corporal punishment and the law protected them from being charged with a felony if a slave under correction was killed. Evidence from both legislation and court records indicates that throughout the seventeenth and into the eighteenth century servants on the whole received far more lenient treatment than slaves.

Nevertheless, the period between 1660 and 1730 in colonial Virginia, recognizing legislative discrimination, seems to be one of judicial due process for the Negro, particularly when compared with the treatment of the Negro in later centuries. The courts of the nineteenth and twentieth centuries certainly did not afford the blacks the same justice received in Lancaster County during this early period. Had there existed in Lancaster during the period studied strong fears and feelings of subjugation toward Negroes, it seems unlikely that the local court would have dealt, indeed been permitted to deal with, blacks so leniently. Evidently, the number of slaves in Lancaster before 1730 was just beginning to constitute a sufficient proportion of the population to pose a real threat to the whites and consequently, the total subjugation of the black by all segments of society, characteristic of slave communities of later years had not developed in Lancaster County by 1730.
CHAPTER XI

CONCLUSION

A comparison of the laws enacted between 1619 and 1730 concerning servants and slaves reveals that there was indeed legislative discrimination against the blacks. By 1680 the position of a slave in law was established as one of total subjugation and bondage for life. While the servant had many rights guaranteed by law, the slave had almost none. Moreover, the servant found the local courts quite accessible and amenable to the protection of his rights. Very seldom was a slave allowed to use the process of the court, and when charged with a crime, trial was in a separate court without benefit of a jury.

In addition the reasons behind the enactment of the laws governing the two classes also differed. Laws for the control and punishment of servants generally were passed to resolve existing problems, while slave laws were enacted in anticipation of problems only later to arise when the numbers of those subjugated grew large enough to threaten the established society. Certainly, blacks were serving for life long before the status of "slave" was written into law, but it is very significant that much of the slave legislation between 1660 and 1730 was designed to create and control a large labor force that had not yet come into its own.

It is a function of any court to enforce the law and, as the law discriminated in the prescribed treatment for servants and slaves
between 1660 and 1730, the court records reflect this discrimination. The justices in Lancaster County did, however, seem to carry out their duty in a manner as equitable as was possible under the laws then extant. Servants appeared before the courts very frequently to argue for their freedom or to have a contract verified, and for the most part the court was sympathetic to their positions. Blacks, both free and slave, when they were permitted to appear before the court seem to have also received just treatment.

The early years of the seventeenth century had been a time of social disorganization when stringent control of all elements in society was necessary for the survival of the colony. However, by the middle of the century the colony had been firmly established and no longer feared the threat of outside attacks. As a result internal controls were relaxed, and the treatment of the laboring classes became better. For the servant this trend continued until the system of servitude died out in the later part of the eighteenth century. Control of slaves, on the other hand, began to tighten as their number and importance to the economy increased. The legislative turning point appears to be 1705 when the existing slave laws were incorporated into one "slave code." On the local level in Lancaster County, this increased pressure on the slaves appears in 1722 when an increase in the prosecution of slave crime becomes obvious. The year 1705 also seems to be a legislative turning point in the treatment of the servant, since most laws passed after this date were concerned with enhancing his position rather than restricting it.

Certainly, as Morris and Wertenbaker argue, there was mistreatment of servants, especially during the seventeenth century. From
the material examined for this thesis, however, it seems unreasonable to assume that the treatment accorded slaves was at any time better than that accorded servants.

Morris bases his argument almost totally upon court cases, and those used for the "Tobacco Colonies" (Virginia and Maryland) definitely do illustrate that servants were mistreated (Morris, 1946: 482-497). However, that there are no cases in the records illustrating slave mistreatment is not conclusive that slaves were not mistreated. As the Lancaster records reveal, it was highly unlikely that cases of slave mistreatment would be adjudicated in court. Another problem with Mr. Morris's conclusion, at least with respect to the Virginia experience is that the majority of his examples of servant mistreatment are Maryland cases, and Abbot Smith has stated that treatment accorded servants in Maryland seems to have been much harsher than in Virginia (Smith, 1947: 276-77). 1 Mr. Morris seems to premise his argument upon specific cases, failing adequately to judge them in context with other cases of the time. If as was done with this study, he had examined court cases involving servants over an extended period of time, he likely would have found that cases of mistreatment comprise a relatively insignificant percentage of the total adjudicated.

1And most remarkable of all, when most colonies progressively made their penal codes milder, should Maryland after abandoning her original death penalty for runaways and substituting double service progressively make her code more severe? I know of no answer to these questions, except to assume that the planters of Maryland were a harsher breed than those of Virginia and Pennsylvania. This assumption appears foolish, but one certainly gains the impression from reading court records that not only the laws but also the magistrates of that colony were less merciful. (Smith, 1947: 276-77)
Examination of the statutes and court records also seem clearly to refute Mr. Wertenbaker's theory that prior to 1690 the treatment of slaves was better than that of indentured servants (Wertenbaker, 1969: 233). He states, "Docile by nature, feeling themselves utterly helpless in a new land, easily acclimated, the Africans proved easier to handle than the white man." Surviving evidence seems to indicate that most of the blacks brought over from Africa were relatively docile in their strange new surroundings. Elkins argues that the shock of being wrenched away from their families and culture as well as the hardships of being transported to enslavement left many first generation Negroes psychologically numbed (Elkins, 1963: 98-102). Mullin found in his study of runaway slaves that very few were native Africans (Mullin, 1972: 46). Therefore, Wertenbaker's description is probably accurate when applied to the majority of first generation blacks. Whether this conclusion holds true for succeeding generations is, however, questionable.

According to Wertenbaker another indication of inferior servant conditions was the frequency with which servants ran away. It is true that cases involving runaway servants appear in the records of seventeenth century Virginia with much greater frequency than runaway blacks. To conclude that this evidence of itself demonstrates that servants were being treated badly, however, is a bit hasty, since it presupposes that all incidents of running away are the result of mistreatment. Moreover, there were many more servants than slaves, and consequently, it is only reasonable that there would be fewer runaway

---

1Mullin has well illustrated that, in the case of slaves, mistreatment was not the primary determinant of absconding. He lists, as controlling, three other reasons: to visit, to hire oneself out and pass for free, and to remove oneself to non-slaveholding places. Very
slaves. The slave was branded by his color, thus, it was much more
difficult for a slave to run away unnoticed. But most importantly,
incidents of slaves running away were less likely to be recorded,
especially in the seventeenth century before the laws officially rewarded
the captors of runaways making it necessary to keep records of
captured runaways for reward purposes, and before newspapers published
notices of runaways.

The examination of early statutes and records of the Lancaster
court clearly indicate a greater concern with the protection of servants
and their civil rights than was the case with slaves. Mr. Wertenbaker's
arguments, while certainly accurate when limited to specific examples,
prove to be gross overgeneralizations in light of the findings in this
paper.

Historical, legislative, and judicial records indicate that
there was prejudice against blacks in the Virginia colony from the
very moment the first ship carrying blacks arrived in 1619 - prejudice
more intense and different in kind from that experienced by the white
servant. There is no evidence that slaves were accorded better treatment
than servants for any length of time during the history of the colony
and it is submitted that the converse is, in fact, true. While there
obviously were individual exceptions to this proposition, evidence from
the legislative annals of the Virginia colony and the court records of
Lancaster County indicate that servants were accorded better treatment
than slaves throughout the colonial period.

few slaves, it is suggested, ran away because they were demoted or
whipped (Mullin, 1972: 106-08).
APPENDIX I

COMPARISON OF SERVANT AND SLAVE LEGISLATION
(Compiled from Hening's Statutes-at-Large)

<table>
<thead>
<tr>
<th>SERVANT LAWS</th>
<th>SLAVE LAWS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1639</td>
<td>Negroes not required to be armed</td>
</tr>
<tr>
<td>Punishment established for marrying without consent of owner or owners</td>
<td></td>
</tr>
<tr>
<td>Punishment for fornication</td>
<td></td>
</tr>
<tr>
<td>Punishment for running away (1st and 2nd offenses)</td>
<td>1642</td>
</tr>
<tr>
<td>Right to complain of ill-usage</td>
<td></td>
</tr>
<tr>
<td>Felony to carry arms to the Indians</td>
<td></td>
</tr>
<tr>
<td>Time set by law for servants coming into the country without indentures</td>
<td></td>
</tr>
<tr>
<td>Servitude to colony as a punishment abolished</td>
<td></td>
</tr>
<tr>
<td>(Penalty established for harboring runaway servants)</td>
<td></td>
</tr>
<tr>
<td>(Penalty established for dealing with servants or apprentices)</td>
<td></td>
</tr>
<tr>
<td>1654</td>
<td></td>
</tr>
<tr>
<td>Provisions made for having Indian servants</td>
<td></td>
</tr>
<tr>
<td>Longer time set for Irish servants coming into the country without indentures</td>
<td></td>
</tr>
<tr>
<td>Penalty for 2nd offense of running away (Penalty for harboring a runaway)</td>
<td>1655</td>
</tr>
<tr>
<td>SERVANT LAWS</td>
<td>SLAVE LAWS</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>Servants should be provided for properly on voyage to Virginia</td>
<td>1657</td>
</tr>
<tr>
<td>Punishment for bastardy</td>
<td></td>
</tr>
<tr>
<td>Punishment for marrying without consent</td>
<td></td>
</tr>
<tr>
<td>Punishment for fornication</td>
<td></td>
</tr>
<tr>
<td>Penalty for a servant forging a certificate of freedom</td>
<td></td>
</tr>
<tr>
<td>Punishment for running away</td>
<td></td>
</tr>
<tr>
<td>Right to court remedy for ill-usage</td>
<td></td>
</tr>
<tr>
<td>Time set for servants without indenture with courts to adjudge ages of servants within a set amount of time from servant's arrival</td>
<td></td>
</tr>
<tr>
<td>Provisions for the use of &quot;hue and cry&quot; as the method for returning runaways</td>
<td></td>
</tr>
<tr>
<td>(Penalty for hiring a runaway)</td>
<td></td>
</tr>
<tr>
<td>(Claims for headrights to be made before the county courts)</td>
<td></td>
</tr>
<tr>
<td>(Penalty for dealing with another's servant)</td>
<td></td>
</tr>
<tr>
<td>Hair of runaway servants to be cut short for easy identification, for prevention of further offenses</td>
<td>1658</td>
</tr>
<tr>
<td>Act against Irish servants without indentures repealed</td>
<td>1659</td>
</tr>
<tr>
<td>Penalty established for a servant doing violence to his master</td>
<td></td>
</tr>
<tr>
<td>(Provision for public payment for passage of runaway servants if master refuses)</td>
<td></td>
</tr>
<tr>
<td>SERVANT LAWS</td>
<td>SLAVE LAWS</td>
</tr>
<tr>
<td>--------------</td>
<td>------------</td>
</tr>
<tr>
<td>Provision for viewing and burying of servants</td>
<td>English servants who runaway with Negroes incapable of serving extra time, shall serve their time</td>
</tr>
<tr>
<td>Time set for servants without indentures</td>
<td>Children of Negro women to serve in the same status as their mothers</td>
</tr>
<tr>
<td>Penalty for secret marriages</td>
<td>(Double the usual fine for a white committing fornication with a black)</td>
</tr>
<tr>
<td>Penalty for fornication</td>
<td></td>
</tr>
<tr>
<td>Penalty for bastardy</td>
<td></td>
</tr>
<tr>
<td>Formalization of freedom certificate requirements</td>
<td></td>
</tr>
<tr>
<td>Runaway laws re-enacted, with additional provision for Negroes</td>
<td></td>
</tr>
<tr>
<td>Cruelty of masters prohibited with re-enactment of right to complaint for ill-usage</td>
<td></td>
</tr>
<tr>
<td>Punishment for unruliness</td>
<td></td>
</tr>
<tr>
<td>Penalty for bastardy, addition of provision for sale of women servants impregnated by their masters</td>
<td></td>
</tr>
<tr>
<td>Servants ages to be adjudged within 4 mo. of arrival</td>
<td></td>
</tr>
<tr>
<td>Women servants who work ground to be tithable</td>
<td></td>
</tr>
<tr>
<td>Right to be provided for on voyage to Virginia</td>
<td></td>
</tr>
<tr>
<td>Right to ownership of property</td>
<td></td>
</tr>
<tr>
<td>(Penalty for dealing with another's servants)</td>
<td></td>
</tr>
<tr>
<td>(Masters of ships to provide properly for poor servants on the voyage over)</td>
<td></td>
</tr>
<tr>
<td>Licence from master needed to go abroad</td>
<td></td>
</tr>
<tr>
<td>Localities given permission to prohibit meetings of servants</td>
<td></td>
</tr>
<tr>
<td>Time set for servants without indentures</td>
<td></td>
</tr>
<tr>
<td>(Act against &quot;entertayners&quot; of runaways)</td>
<td></td>
</tr>
<tr>
<td>SERVANT LAWS</td>
<td>SLAVE LAWS</td>
</tr>
<tr>
<td>--------------</td>
<td>------------</td>
</tr>
<tr>
<td>Moderate corporal punishment as well as addition of time as penalty for running away</td>
<td>1667</td>
</tr>
<tr>
<td>Provision made to reward apprehenders of runaways</td>
<td>1668</td>
</tr>
<tr>
<td>Runaway Act revised</td>
<td>1669</td>
</tr>
<tr>
<td>Baptism not to alter the status of a slave</td>
<td>All Negro women to be considered tithable (including free ones)</td>
</tr>
<tr>
<td>Accidental killing of a slave during correction not to be considered a crime</td>
<td>1670</td>
</tr>
<tr>
<td>Blacks and Indians not allowed to own a servant unless he is of their own race Slaves included under the revised Runaway Act All non-Christians entering the country by water to serve for life, those coming by land (Indians to serve 12 years or until 30 years old</td>
<td>1671</td>
</tr>
<tr>
<td>Negroses to be considered property in appraisal of estates</td>
<td>1672</td>
</tr>
<tr>
<td>A runaway slave resisting capture may be killed</td>
<td>1676</td>
</tr>
</tbody>
</table>

Contracts between masters and servants must be approved by a justice of the peace Servants who joined Bacon's Rebellion to be treated as runaways
### APPENDIX I - Continued

<table>
<thead>
<tr>
<th>SERVANT LAWS</th>
<th>SLAVE LAWS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Imported servants not to be tithable until age 14</td>
<td>Ages of imported Negro children to be adjudged within 3 months of their arrival</td>
</tr>
<tr>
<td>Creditability of indentures to be judged by a justice of the peace</td>
<td>Blacks to be considered tithable at the age of 12</td>
</tr>
<tr>
<td>Servants involved in Bacon's Rebellion pardoned</td>
<td>Negroes forbidden to carry any sort of weapon</td>
</tr>
<tr>
<td></td>
<td>Need of permission of master to leave his property</td>
</tr>
<tr>
<td></td>
<td>Forbidden to lift a hand against a Christian</td>
</tr>
<tr>
<td></td>
<td>A runaway slave resisting capture may be killed</td>
</tr>
<tr>
<td></td>
<td>Act against Negro insurrections</td>
</tr>
<tr>
<td>1680</td>
<td>1682</td>
</tr>
<tr>
<td></td>
<td>All non-Christians brought into the colony (including Indians, are they slaves whether they are converted or not)</td>
</tr>
<tr>
<td></td>
<td>Provision that the Act against Negro insurrections is read twice a year at all the churches</td>
</tr>
<tr>
<td></td>
<td>A slave may not remain on a plantation other than his own for more than 4 hours at a time</td>
</tr>
<tr>
<td>Provision for what information is to be included on certificates for apprehending runaways</td>
<td>Provision for what information is to be included on certificates for apprehending runaways</td>
</tr>
<tr>
<td>1686</td>
<td>1692</td>
</tr>
<tr>
<td></td>
<td>Court of Oyer and Terminer established to try slave crimes</td>
</tr>
<tr>
<td></td>
<td>Negroes must give up ownership of horses, cattle, or hogs.</td>
</tr>
<tr>
<td></td>
<td>Master responsible for damage done by slaves left on a quarter without an overseer</td>
</tr>
</tbody>
</table>
### APPENDIX I - Continued

<table>
<thead>
<tr>
<th>SERVANT LAWS</th>
<th>SLAVE LAWS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thirty lashes for killing deer out of season</td>
<td>Thirty lashes for killing deer out of season</td>
</tr>
<tr>
<td>Age adjudgement to be within 3 months of arrival Penalty for stealing hogs - a fine of 400 lbs. tobacco to be paid by the owner, servant to repay at rate of 150 lbs. tobacco = 1 month Tavern keepers selling liquor to servants without their master's consent to be fined 10 shillings</td>
<td>1699</td>
</tr>
<tr>
<td>1705 ACT CONCERNING SERVANTS AND SLAVES</td>
<td></td>
</tr>
<tr>
<td>Time set for servants coming in without indentures Ages must be adjudged within 6 months of arrival Servants given 2 months to prove indentures Penalty for selling free persons as slaves Duty of masters to provide for their servants and to give no immoderate punishment Mothers of mulatto bastards to pay £15 or serve 5 yrs. Right of servants to complain to court of ill-usage Churchwardens to see that sick servants are cared for Right to petition for wages and freedom in court Contracts between master and servant void unless approved in court Right to ownership of goods Masters cannot discharge sick servants Freedom dues standardized and guaranteed</td>
<td>All Negro, mulatto, and Indian women age 16 and up to be tithable Age adjudgement to be within 3 months of arrival Penalty for stealing hogs: 1st offense, 39 lashes; 2nd offense, both ears to be cut off</td>
</tr>
<tr>
<td>1705</td>
<td>All non-Christians brought in to be slaves whether converted or not Being in England no grounds for discharge from slavery Negroes, mulattoes, and Indians can only have servants of their own kind Mulatto bastards to be bound out until age 31 If a runaway does not give the name of his master to be kept in Gaol Penalty for permitting another's slaves to remain on plantation Killing a slave under correction not a felony Thirty lashes for any Negro, mulatto, or Indian resisting a Christian Forbidden to carry arms (20 lashes) Slaves not to go out without certificates (20 lashes)</td>
</tr>
<tr>
<td>SERVANT LAWS</td>
<td>SLAVE LAWS</td>
</tr>
<tr>
<td>--------------</td>
<td>------------</td>
</tr>
<tr>
<td><strong>1705 ACT CONCERNING SERVANTS AND SLAVES (CON'T)</strong></td>
<td><strong>1705 ACT CONCERNING SERVANTS AND SLAVES (CON'T)</strong></td>
</tr>
<tr>
<td>Penalty for violence to master</td>
<td>Slaves forbidden to own horses, cattle, or hogs</td>
</tr>
<tr>
<td>Penalty for dealing with servants</td>
<td>Baptism does not exempt from slavery</td>
</tr>
<tr>
<td>Servants can be whipped in lieu of fines or serve person who pays fine</td>
<td>Blacks to serve according to status of their mothers</td>
</tr>
<tr>
<td>Penalties for bastardy - if by master, servant to be sold; if mulatto to serve 5 yrs. instead of one</td>
<td>Lawful to kill outlying slaves against whom proclamation has been made</td>
</tr>
<tr>
<td>Certificates for freedom to be issued by courts</td>
<td>Lawful for county courts to order punishment (such as dismemberment) for incorrigible slaves</td>
</tr>
<tr>
<td>Servant using forged certificate (2 hrs. in pillory)</td>
<td>Masters to be paid by the public for slaves executed</td>
</tr>
<tr>
<td>Forger of certificate £10 fine or 39 lashes</td>
<td>Masters may defend slaves in court of Oyer and Terminer but only on facts and not on the proceedings of the court</td>
</tr>
<tr>
<td>Reward established for taking up runaways</td>
<td>Act declaring slaves real estate</td>
</tr>
<tr>
<td>Runaways to be returned by being sent from constable to constable; each constable to whip runaways and not to delay their return by working them</td>
<td>Reward established for taking up runaways</td>
</tr>
<tr>
<td>Runaway servants to pay for the expenses of their being returned; may pay for these with additional service or by giving security</td>
<td>Runaways to be returned by being sent from constable to constable; each constable to whip runaways and not to delay their return by working them</td>
</tr>
</tbody>
</table>

| 1711 | 1711 |
| Servants employed in a crop at the death of their master to remain on plantation until Dec. 22 to finish the crop | Slaves employed in a crop at the death of their master to remain on plantation until Dec. 22 to finish the crop |

| 1713 | 1713 |
| Servants to keep a horse must be licensed | |

<p>| 1723 | 1723 |
| Felony for 5 or more slaves to conspire murder or rebellion | Court of Oyer and Terminer to remain |</p>
<table>
<thead>
<tr>
<th>SERVANT LAWS</th>
<th>SLAVE LAWS</th>
</tr>
</thead>
</table>
| 1723 (Cont') | **Negroes, mulattoes, or Indians giving false evidence**  
|              | in court to receive 39 lashes and have their ears removed  
|              | Owners may appear in defense of their slaves  
|              | Act to prevent unlawful meetings of 5 or more slaves  
|              | except with permission of owner, when on business,  
|              | or at worship  
|              | Punishment for whites, free Negroes or Indians  
|              | meeting with or harboring slaves  
|              | Need owner's permission to visit another plantation  
|              | Forbidden to possess arms  
|              | Free Negroes, mulattoes or Indians if housekeeper or  
|              | in militia may have one gun  
|              | On frontier slaves may be licensed to have arms  
|              | Slaves may only be set free by license for meritorious service; otherwise if set free to be sold  
|              | by the churchwardens  
|              | Courts may permit dismemberment of incorrigible slaves  
|              | If a slave dies under correction, owner is exempt  
|              | from punishment  
|              | Manslaughter of slave not punishable; must be  
|              | willful intent proved by one credible witness  
|              | All free Negroes, mulattoes, or Indians over 16 to  
|              | be tithable  
|              | Child of mulatto or Indian serving until 31 to also  
|              | serve until 31  
|              | Free Negroes, mulattoes, and Indians not to vote  

APPENDIX I - Continued
<table>
<thead>
<tr>
<th>SERVANT LAWS</th>
<th>SLAVE LAWS</th>
</tr>
</thead>
<tbody>
<tr>
<td>For making or using a forged pass - to stand in pillory 2 hrs. and receive 30 lashes</td>
<td>1726 Provision for runaways not knowing or saying master's name to be advertised and after 2 months, hired out</td>
</tr>
<tr>
<td>Six months service for a runaway for changing his name or otherwise disguising himself</td>
<td></td>
</tr>
<tr>
<td>Penalty for servants pretending to be tradesmen</td>
<td>1727 Act declaring slaves real estate that could be annexed to pass with the lands</td>
</tr>
</tbody>
</table>
### APPENDIX II

**SERVANT AND SLAVE - CRIMES AND SUITS (1660-1730)**

<table>
<thead>
<tr>
<th>Crime</th>
<th>1660-69</th>
<th>1670-79</th>
<th>1680-89</th>
<th>1690-99</th>
<th>1700-09</th>
<th>1710-19</th>
<th>1720-29</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hog Killing</td>
<td>6</td>
<td>0</td>
<td>8</td>
<td>0</td>
<td>12</td>
<td>0</td>
<td>9</td>
</tr>
<tr>
<td>Threatening Master</td>
<td>10</td>
<td>0</td>
<td>8</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>9</td>
</tr>
<tr>
<td>Violence</td>
<td>2</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Stealing</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Rape</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Manslaughter</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<td>Murder</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<td>0</td>
</tr>
<tr>
<td>Fortune-telling</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Buggery</td>
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<td>0</td>
<td>0</td>
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<td>0</td>
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</tr>
<tr>
<td>Selling Syder without a License</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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</tr>
<tr>
<td>Meeting Illegally</td>
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<td>0</td>
<td>0</td>
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<td>0</td>
</tr>
<tr>
<td>Incorrigible</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>SUB-TOTAL (CRIMINAL CASES)</strong></td>
<td>18</td>
<td>0</td>
<td>21</td>
<td>0</td>
<td>15</td>
<td>1</td>
<td>20</td>
</tr>
<tr>
<td>Suits for Freedom</td>
<td>27</td>
<td>1</td>
<td>17</td>
<td>0</td>
<td>18</td>
<td>1</td>
<td>9</td>
</tr>
<tr>
<td>Suits for Dues</td>
<td>6</td>
<td>0</td>
<td>8</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Complaints of Ill-Usage</td>
<td>5</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td><strong>SUB-TOTAL (CIVIL CASES)</strong></td>
<td>38</td>
<td>1</td>
<td>28</td>
<td>0</td>
<td>23</td>
<td>1</td>
<td>19</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>56</td>
<td>1</td>
<td>49</td>
<td>0</td>
<td>38</td>
<td>2</td>
<td>39</td>
</tr>
</tbody>
</table>

I = Indian  M = Mulatto  F = Free  EI = East Indian
APPENDIX III

SERVANT RIGHTS

Guarantees

1642 - Standard time of service set for servants coming in without indenture.
1642 - Right to complain in court of ill-usage by master
1657 - Servants to be provided for properly on voyage to Virginia
1657 - Ages of servants to be adjudged in court
1661 - Right to ownership of property
1661 - Provision for viewing bodies of servants before burial
1661 - Right of women servants impregnated by their masters to be sold
1661 - Provision for certificates of freedom to be provided by courts
1670 - Indians and blacks forbidden to own Christian white servants
1676 - Masters must negotiate contracts with servants before justices of the peace
1680 - Creditability of indentures to be judged by a justice of the peace
1705 - Servants to have two months to prove indentures
1705 - Penalty for people selling free persons as slaves
1705 - Protection from inmoderate punishment by masters
1705 - Duty of master to provide properly for his servants
1705 - Churchwardens to see that sick servants are cared for
1705 - Right to petition in court for wages and freedom
1705 - Contracts made by servants void unless made in court
1705 - Freedom dues standardized and guaranteed
1705 - Servants given right to choose to be whipt in lieu of paying fines

Restrictions

1642 - Prohibited dealing without permission of master
1642 - Forbidden to marry without the consent of their master
1663 - Need license from master to go abroad
1663 - Localities could prohibit meetings of servants if desired
1705 - Servants prohibited from buying liquor at taverns without master's permission
1713 - Servants not to keep a horse without a license
APPENDIX IV

SLAVE RIGHTS

Guarantees

1705 - Masters may defend slaves in courts of Oyer and Terminer, but only on facts
1723 - On frontier plantations slaves may be licensed to have arms

Restrictions

1667 - Baptism does not alter the status of a slave
1669 - Not a felony for a slave to be killed while being corrected
1680 - Need permission to leave master's grounds
1680 - May not lift a hand against a Christian
1682 - May not remain at a plantation other than their own more than four hours at a time
1691 - No slave may be set free unless they are transported out of the country within six months
1692 - Separate court of Oyer and Terminer set up to try slaves accused of capital crimes
1692 - Forbidden to own horses, cattle, or hogs
1705 - Act declaring slaves real estate
1723 - Slaves may only be set free for acts of meritorious service
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Ross, Edward A.

Vaughan, Alden J.
VITA

Betty Wade Wyatt Coyle


The author was accepted for graduate work in the Department of Sociology at the College of William and Mary in February, 1970.